The Solicitors' Journal and Weekly Reporter.

(ESTABLISHED 1857.)

VOL. LXXI. Saturday, February 5, 1927. No. 6

Current Topics.

Doctors' Bills and Barristers' Fees.

A CERTAIN amount of surprise has been caused by Lord Chief Justice MOORE'S ruling at Belfast that "a doctor or barrister is not entitled to charge a wealthy man more than a poor man." In fact the apparently forbidden course appears to be the almost invariable practice of medical men. If then it was against the law it would have to be classified with motor car speeds of over twenty miles an hour, and street book-making, as the subject of a prohibition of the piecrust variety. A more detailed account of the facts, however, reveals, as might perhaps have been expected, that a few words torn from their context may be entirely misleading. In the case before the court a doctor sued a patient for fees for attendances which apparently had not been fixed. The patient was an opulent man, and, having regard to this fact the doctor charged £1 a visit. The judge took the view that, the fee not having been fixed, and he consequently having to find what was a reasonable figure, he could not surcharge a wealthy man as such. But his ruling on the case before him could not affect a bargain actually made, and if a doctor agreed to charge threepence to a costermonger (which was the fee of a certain busy practitioner in Whitechapel some years ago) and then a hundred guineas to an eastern potentate, he would but be exercising the freedom in a free country to put his own price on his own services as he thought fit. Sometimes, for the general good of a profession or occupation, those engaged in it will modify this liberty, as in the case of a barrister's minimum fee or standard trade-union wages, but any such regulation is internal and not external. In the medical profession it does not appear to be "infamous conduct" to take a threepenny or sixpenny fee, though a barrister who conducted business on such a footing would find short shrift with his Benchers. The actual decision may be respectfully criticised on the ground that the judge hardly gave sufficient regard to the almost universal custom of the medical profession. A possible analogy is the mortgagee and his penal rate of interest if payment is unpunctual. A clause to this effect is void as oppressive and inequitable, and a mortgagee who put a penal rate of £1 per cent. on £5 per cent. might receive a scolding in court. But if he charged £6 per cent. reducible to £5 per cent. on punctual payment that would be a commendable and merciful arrangement. And so a doctor does not arrange that a millionaire should pay a special penal fee or "ransom," but he charges him the full fee, which he tempers to the less fortunate as a graduated scale. And, as a matter of common-sense, the figure on a barrister's brief or instructions, or a solicitor's bill which is not a scale fee, is mainly based on the work done or to be done, but the means of the client, and the magnitude of the transaction are also factors in the result.

Simony and Common Sense.

ATTACHED TO a certain benefice in the City of London are the profits arising from the rents of some land near the church, and those profits now approach to the emoluments of a bishopric. They are, beyond all question, excessive in amount having regard to the comparatively light duties of the incumbent. The living falling vacant, each candidate was therefore asked if he would be content to forego a portion of this "unearned increment" in favour of some less fortunate brother. Each candidate professed his willingness so to do, and ultimately one was chosen, but presentation has been delayed on the allegation that a bargain under which the presentee forgoes a single penny of the swollen income is "simoniacal."

If the parties to so obvious and reasonable an arrangement are to be held guilty of simony, comment may be made that it is high time for 31 Eliz. c. 6 (1589) to be revised and brought up to date. No doubt, it still remains important that there should be no corrupt bargaining on the presentation to a benefice, though the old law which shamelessly tolerated the traffic in patronage, and the resignation bonds which have only just been abolished, allowed so much real simony that it would hardly have seemed worth while to exclude anything further. Since, however, the Benefices Act, 1898, and the Benefices Act, 1898 (Amendment) Measure, 1923, have done away with most of the old abuses, some further measure or statute to make the Elizabethan law more elastic would seem to be indicated. An arrangement by which a candidate for an incumbency openly agrees with the consent of the Bishop and patron to give up part of an excessive income for the support of some indigent clergyman is not simony, though, of course, it would have to be safeguarded, if permitted, to prevent bidding between candidates. This could easily be provided by placing an uniform scheme for each to agree. Again, it would appear from *Wright* v. *Davies*, 1876, 1 C.P.D. 638, *Downes* v. *Craig*, 1841, 9 M. & W. 166, and *Goldham* v. *Edwards*, 1856, 18 C.B. 389, that there can be no give and take on an exchange of benefices, otherwise than an agreement for each to forego dilapidation money, on the footing that it is uncertain which will thereby benefit. If both bishops and both patrons agreed, and parishioners had the right to make reasonable objection, a disclosed bargain might lead to an exchange to the benefit of both parishes concerned, though now such a bargain is forbidden as simony by s. 7 of the old Act.

Operations and the Patient's Consent.

A RECENT CASE raised the question, not a new one, as to how far a surgeon is justified in operating upon a patient without his or her consent. Having regard to the fact that even a medical examination of a person *sui juris* without such consent is an actionable trespass against the person (see, for instance, *Agnew* v. *Jobson*, 1877, 13 Cox C.C. 625, where the plaintiff was a female, and *Boulton* v. *Park*, cited Taylor's Medical Jurisprudence, 7th ed. pp. 75-76, where the examinee was a male) so *a fortiori* is an operation. Normally, therefore, the consent of the patient is obtained, but if the latter is unconscious, as the result of an accident or otherwise, the surgeon may have to decide whether he will operate without consent, or leave the patient, in his opinion, to a risk of permanent disability or even of certain death. In the present case the plaintiff's husband had consented, but she had not done so. When, however, she admitted in cross-examination that she would have consented if given the opportunity, the case was at an end. As an example of an operation actually performed more serious than that to which consent was expressly given, *Beatty* v. *Cullingworth* may be cited, an account of which is given in the Transactions of the Medico-Legal Society, vol. VI, p. 132. There the plaintiff, a woman, consented to the removal of one ovary, but also expressly forbade the removal of both. The defendant, however, said she must leave him discretion. On operating, he found each so diseased that he deemed the removal of both necessary to save the patient's life, three other eminent surgeons confirming his opinion. The jury found for the defendant, and considered that the action should not have been brought. HAWKINS, J., observed: "If a medical man, with a desire to do his best for the patient, undertakes an operation, I should think it is a humane thing for him to do everything in his power to remove the mischief, provided he has no definite instructions not to operate." He also left it to the jury whether there was a tacit consent. It may be presumed that an adult patient has an absolute right to veto an operation necessary to save his or her life, for in such circumstances a charge of attempted suicide would hardly lie. Probably also a doctor would have to respect the parent's or guardian's veto in the case of a child. Such parent or guardian, however might commit an offence against the Children Act, 1908, s. 12 (1) by such refusal: see *Oakey* v. *Jackson*, 1914, 1 K.B. 216.

Unpunctual Trains.

IN THE correspondence columns of *The Times*—the general vent-hole of grievances—numerous letters have recently appeared in which the writers complain bitterly of the unpunctuality of trains on each of the great railway systems. Whether or not all or any of these complaints are well founded, the cautious lawyer would say is a question of fact to be determined in each case; but assuming that they are justified, the question may be put, has a passenger who has suffered loss or inconvenience from delay in carrying him to his destination any remedy against the railway company? At common law, as appears from a number of cases, there is a duty on the part of a carrier of passengers, whether he carries by road or by rail, to deliver them at their destination within a reasonable time, and if an irate passenger, who has been delayed owing to the slowness of the train by which he has travelled, should ask "But what is a reasonable time?" the cautious lawyer can only tell him that that is a question to be determined by the circumstances which actually existed at the material time and not by any conventional or assumed state of facts. In the past, railway companies have been held liable for loss occasioned by the unpunctuality of their trains when this has been due to the negligence of their servants, but where the delay has been occasioned by causes altogether outside the company's control, such as a fog or a storm, the company could successfully plead such an occurrence as an excuse. Nowadays, the railway companies are sufficiently astute to modify their common law obligations in this as in so many other matters by special conditions, and in each case a passenger who has suffered from delay in railway travelling would do well, before embarking on litigation, to assure himself that the company in question has not protected itself by its conditions. In the well-known case of *Le Blanche* v. *London and North Western Railway Co.*, 1876, 1 C.P.D. 286, the notice published by the company as to time-tables said, *inter alia*, that "every attention will be made to ensure punctuality, so far as it is practicable; but the directors give notice that the company do not undertake that the trains shall start or arrive at the time specified in the bills, nor will they be accountable for any loss, inconvenience, or injury which may arise from delays or detention." The court held that the first words of the notice imported an obligation to use due attention to keep the times specified as far as practicable, having regard to the necessary exigencies of the traffic and circumstances over which the company had no control. Afterwards the same company eliminated the words promising that "every attention will be paid to ensure punctuality," and further protected themselves by a clause that "the company will not be accountable for any loss, inconvenience or injury which may arise from delays to or detention of passengers caused by the negligence of the servants of the company, or by any other cause whatsoever." An examination of the various cases on the subject, and the language of the conditions in operation on most of the railways, leads us to the conclusion that a railway company can very rarely, if at all, be made responsible for inconvenience and delay caused by the unpunctuality of trains. Whether this should be so in the case of great monopolies like railway companies is another matter.

Titles of Honour.

THE CONSTITUTION of the United States contains an express prohibition of the grant of titles of nobility, but while the citizens of that great republic have accepted, not always perhaps very willingly, this embargo on the creation of hereditary honours, they have circumvented it as far as they possibly can by a prolific use of other distinctions. "With all our boasted free and equal superiority over the communities of the Old World," wrote OLIVER WENDELL HOLMES, "our people have the most enormous appetites for Old-World titles of distinction"; but being unable, in the United States at all events, to gratify their appetites in this matter as they would like, they are fain to put up with lesser marks of distinction. Of these they have an abundance—Governors, Generals, Colonels, Presidents and Honourables, titles which those who at any time were entitled to them retain after quitting office. Human nature is much the same all the world over, and in most men there is inborn the desire to be marked out in some distinctive way from their fellows. Not only in America, but also in Canada there has been in recent years an official ban on the granting of titles. In 1919 the Dominion House of Commons adopted a resolution that no title of honour should be conferred on any British subject domiciled or ordinarily resident in Canada, save such appellations as were of a professional or vocational character or which appertained to an office. Quite recently, however, it is noticeable that more than one distinguished Canadian statesman has given expression to the view that this resolution was a mistake, and that Canadians, like other members of the great British Empire, should be eligible as recipients of His Majesty's bounty in the shape of some distinctive title as a reward for national services. This is the sensible view to take of the question, and so long as titles are conferred, as they should alone be, for prominent public service, no one can have any reason for complaint.

Evidence in Criminal Cases:

Comments on *Rex* v. *Dunkley*.

By E. P. HEWITT, K.C., LL.D.

The extent of the rights conferred by law upon accused persons, at their trial for a criminal offence, shows the gradual development of a policy of scrupulous fairness, amounting to generosity. The laws of England—in practice rather than in theory—have long been more merciful than those prevailing in most other civilised countries; but even in comparatively modern times, defendants in criminal cases laboured under grave disabilities. Of the shocking treatment of persons accused of treason a couple of centuries ago, it is unnecessary to speak. In ordinary cases of felony, the accused was treated less harshly; and a person accused of a misdemeanour, however aggravated, was regarded as an offender in a less degree than anyone who had committed a wrong technically fulfilling the definition of a felony.

At a trial for a misdemeanour the accused was allowed, long before the Trial for Felony Act, 1836, to have the assistance of counsel; but upon a charge for felony this was not permitted, although if some *point of law*—considered by the court "fit to be debated"—arose, the same might be argued by counsel on the prisoner's behalf. The Act of 1836 provided that any person tried for a felony should be at liberty, after close of the case for the prosecution, "to make full answer and defence thereto by counsel, or by attorney in courts where attorneys practise as counsel."

A still more serious hardship was the inability, until very recent times, of the defendant in any criminal trial to give evidence. Not only was he unable to give evidence on his own behalf, but he could not give evidence against his co-defendants—if he was indicted jointly with others; although he could do so if they were tried separately from him. By the Evidence Act, 1877, it was provided that in the case of prosecutions for trying or enforcing a civil right only (e.g., the repair of a bridge or a highway, or a nuisance connected with the same), the defendant, and the husband or wife of the defendant, should be competent and compellable witnesses for either the prosecution or the defence. The word "compellable" in this provision is applicable to the husband or wife of the defendant, but not, apparently, to the defendant personally. By the Criminal Law Amendment Act, 1885, which was aimed at the protection of women and girls and contains various provisions relating to indecent offences, it is enacted that every person charged under the Act, or under s. 48 or ss. 52-55 of the Offences Against the Person Act, 1861, and the husband or wife of the person so charged, shall be competent but not compellable witnesses, at every stage, except on an inquiry before a grand jury. By the comprehensive statute—the Criminal Evidence Act, 1898—it is provided (s. 1) that every person charged with an offence, and the wife or husband of such person, shall be competent witnesses for the defence at every stage, whether the defendant is charged solely or jointly with any other person, subject to the provisos therein mentioned, including the following:—

(*a*) The person charged is not to be called as a witness, except upon his own application;

(*b*) The failure of the person charged, or of the wife or husband of such person, to give evidence is not to be made the subject of comment by the prosecution;

(*g*) A witness giving evidence is to give such evidence from the witness-box;

(*h*) Nothing in the Act is to affect the right of a person charged to make a statement without being sworn.

Provisos (*e*) and (*f*) are referred to later. The proviso (*b*) is important, but it does not remove the objection that an unavoidable prejudice arises where a person accused abstains from going into the witness-box. The proviso (*g*) is of practical benefit to a person charged, as suspicion is bound to attach to evidence given from the dock. Proviso (*h*) is of interest as preserving an ancient practice. At Common Law it was open to a defendant indicted for an offence to make a statement not on oath, upon which, of course, he could not be cross-examined. This is a right still sometimes exercised. A difference of judicial opinion has been expressed as to the point in the proceedings when such a statement should be made. The balance of authority appears to support the view expressed by Lord Darling (then Darling, J.) in *Rex* v. *Sheriff*, 20 Cox C.C., p. 334, that the time for making such a statement is after the evidence for the prosecution is concluded and before the speech of counsel summing up such evidence is commenced.

Provisos (*e*) and (*f*) to s. 1 of the Act of 1898 are of special importance—

(*e*) A person charged who gives evidence may be asked any question in cross-examination notwithstanding that it would tend to incriminate him;

(*f*) A person charged and called as a witness is not to be asked, and if asked is not required to answer, any question tending to show that he has committed, or been convicted of, or charged with, any offence other than that wherewith he is then charged, or is of bad character.

This last-mentioned proviso is qualified by three exceptions, the second of which is in the following terms—

"(ii) (unless) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, *or the nature or conduct of the defence is such as to involve imputations on the character of the prosecution or the witnesses for the prosecution.*"

This last-mentioned clause came up for construction by the Court of Criminal Law Appeal in the recent case *Rex* v. *Dunkley*, 1927, 1 K.B. 323, referred to later. Section 2 of the Act of 1898 provides that where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution. This, as will be observed, is the same point in the proceedings as that at which a statement not on oath—where this course is adopted—has (apparently) to be made. Section 3 provides that where the right of reply depends upon whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply. This is a generous provision of practical value to a person undergoing a criminal trial.

The defendant in *Rex* v. *Dunkley* was indicted for breaking and entering a warehouse, and with stealing and receiving certain articles therein, one of such articles being a bicycle. Evidence was given at the trial of the breaking into the warehouse, and the larceny, and of the finding of the bicycle in the defendant's possession, and of his contradictory statements by way of explanation. A Mrs. Smith, one of the witnesses for the prosecution, was cross-examined by counsel for the defence, questions being directed to showing that her evidence was false, and was in fact fabricated by her because she thought she had a grievance against the defendant. The defendant afterwards went into the witness box and stated that Mrs. Smith's evidence was untrue and that her story was due to malice. In consequence of this cross-examination and of the defendant's statements in his examination-in-chief, the counsel for the prosecution was allowed by the Court to cross-examine the defendant as to character, with the result that previous convictions were proved or admitted. The defendant called witnesses in support of an *alibi*; but this defence failed, and the jury found the prisoner guilty on the count for receiving stolen property. On the appeal to the Court of Criminal Appeal, it was argued on behalf of the defendant that his cross-examination as to character should not have been allowed; that the words "imputations on the character of witnesses for the prosecution," in s. 1 (*f*) (ii) of the Act of 1898 meant an attack on the general reputation

of a witness, and that although Mrs. Smith's evidence had been challenged, her general reputation had not been attacked.

This contention was rejected by the Court of Criminal Appeal, which held that the suggestion made by the defence that Mrs. Smith's story was concocted out of revenge or malice amounted to an imputation upon her character under s. 1 (*f*) (ii) and that the cross-examination of the defendant was properly allowed.

The change in the law under which a person charged with a crime is enabled to give evidence on his own behalf is no doubt, on the whole, a protection to those wrongly accused. On the other hand, it makes the chance of a guilty person—who before the alteration in the law might have escaped through insufficient evidence—of avoiding conviction more remote. A jury inevitably draws adverse inferences, where the accused, having the right to give evidence, abstains from going into the witness box. It is open to question, moreover, whether, in many cases, the position of a defendant, innocent of the offence with which he is charged, but who may be of an undesirable character, or have done something of which he is ashamed, is not made worse by having become a competent witness. The accused, having done something throwing (unjust) suspicion on him, may be afraid of admitting the true facts, and thus be led into making a complete denial. The falsehood of such evidence being shown by cross-examination, a jury may be disposed to distrust the defendant's entire evidence (including such part of it as may be true) and to credit him with the commission of the offence with which he is unjustly charged.

Some Points of Highway Law.

XI.

By ALEXANDER MACMORRAN, M.A., K.C.

(*Continued from p.* 91.)

Before leaving the subject of nuisance to a highway, it may be useful to point out that there is no right to hold public meetings in a highway. This subject was considered with regard to meetings in Trafalgar Square in the case of *Ex parte Lewis*, 21 Q.B.D. 191. In the course of an elaborate judgment, Wills, J., said: "A claim on the part of persons so minded to assemble in any numbers and for so long a time as they please to remain assembled upon a highway to the detriment of others having equal rights is in its nature irreconcilable to the right of free passage, and there is, so far as we have been able to ascertain, no authority whatever in favour of it." But not only is it unlawful to hold public meetings on a highway, it is equally unlawful to cause crowds of people to assemble so as to interfere with the public right. It may be sufficient on this point to refer to two cases. The first of these is *Rex* v. *Carlile*, 6 C. & P. 636, a case tried at *nisi prius*. The head-note of the case sufficiently indicates the effect of it. If a party having a house in a street exhibits effigies at his windows and thereby attracts a crowd to look at them which causes the footway to be obstructed so that the public cannot pass as they ought to do, this is an indictable nuisance and it is not at all essential that the effigies should be libellous. And further, it was held that it was not necessary to show that the crowd consisted of idle, disorderly and dissolute persons. The other case is much more recent and it is important because all the authorities on the subject are collected and considered. The case is *Barber* v. *Penley*, 1893, 2 Ch. 447. It was held that the lessee of a theatre was liable for obstruction to access to adjacent premises by reason of the assembling of a crowd previously to the opening of the doors of the theatre.

There are other nuisances connected with highways which consist in the unreasonable use of the way. The public have not only a reasonable right to pass along the highway, but they have a reasonable right of stopping as well as of going or returning in the use of the highway. Whether the right is reasonable in a particular case is a question of fact, but the principles on which that question has to be decided were discussed in the *Original Hartlepool Collieries Company* v. *Gibb*, 5 Ch. D. 713. The following quotation from the judgment of Sir George Jessel illustrates the principle very clearly. He says: "It is not unreasonable that your neighbour should give an evening party occasionally and that there should be a file of carriages running across your door or opposite your door. But it would be very unreasonable if anybody did not break the file to allow your carriage to come up to your own door, and still more unreasonable if, instead of giving parties occasionally as people do, your neighbour were to turn his house into an assembly room or for some private purpose, in consequence of which a file of carriages came every day and obstructed the carriageway to your house." In the more recent case of the *Attorney-General* v. *Brighton & Hove Co-operative Supply Association*, 1900, 1 Ch. 276, the facts were as follows: Traders carrying on a large business in a populous town at premises situated in a street the roadway of which was less than twenty feet wide, kept as many as six vans at once during every alternate hour of the daytime, loading and unloading goods at their premises, thus occupying half the width of the street and seriously obstructing the passage of vehicles through it. It was held that this was an unreasonable use of the highway and that it amounted to a public nuisance, the continuance of which must be restrained by injunction. All the earlier cases were considered and discussed. Space does not permit of an examination or even an enumeration of all of these. But it may be said that the court followed the decision in *Rex* v. *Cross*, 3 Camp. 224, where Lord Ellenborough said: "A stage-coach may set down or take up passengers in the street, this being necessary for public convenience, but it must be done in a reasonable time, and private premises must be procured for the coach to stop in during the interval between the end of one journey and the commencement of another. No one can make a stable-yard of the King's highway."

So far, the subject of nuisance has been discussed with reference to the user of the highway. There remains to be considered the question of injury to the highway. It was long ago laid down that if a carrier carries an unreasonable weight with an unusual number of horses it will constitute a nuisance at common law (Comm. Dig., Chemin A. (3)). In the case of *Rex* v. *Egerly*, 3 Salk., at p. 183, it was laid down that an information would lie against a common carrier who used a wagon with four wheels at *cum inusitato numero equorum*, in which he carried 3,000 or 4,000 pounds weight at one time, by which he spoiled the highway, was adjudged good. In *Reg.* v. *Leech*, 6 Mod. 145, the court held that if a man with a cart used a common pack or a horseway so as to plough it and render it less convenient for riders that would be an indictable nuisance. Coming to more recent times, in the case of *Reg.* v. *Chittenden*, 49 J.P. 503, tried at Maidstone before Hawkins, J., that learned judge directed the jury that persons using a traction engine and trucks on the highway might be indicted for a nuisance if they created a substantial obstruction and occasioned delay and inconvenience to the public substantially greater than such as would arise through the use of carts and horses. In a recent case decided by the House of Lords, *Glasgow Corporation* v. *Bartley*, 93 L.J., P.C.1, it was held that if an individual uses a highway in such a manner as to result in the destruction of separate private property subjacent to the road or in causing material inconvenience or obstruction to the free passage of other users he may be interdicted at the instance of the road authority. In that case an action had been brought by the road authority to recover damages in respect of injury caused to roads by the carriage over them of very heavy traffic. The action failed because it was proved that such traffic had

been carried over the roads for a considerable number of years, and that precautions had been taken to do as little damage to the roads as possible consistent with the passage of such traffic, but that the effect of the traffic was that the roads required repair more often than would have been the case if such traffic had not passed over them. In the course of his judgment, Lord FINLAY said: "It is quite impossible to lay down with precision any law separating traffic which is reasonable and lawful from that which is unreasonable and unlawful; each case must be judged upon its facts. I think that the effect, on the whole, of the evidence in this case is to lead to the conclusion that the traffic now in question is in the nature of that use of highways which is lawful and that the damage resulting is in the nature of fair wear and tear which has made necessary the more frequent repair of the roads. But this is an incident of the increase of traffic. There has been no destruction of the road by these heavy weights."

(To be continued.)

NOTE.—The previous Articles on "Highway Law," by Mr. Macmorran, K.C., appeared in our issues of the 20th and 27th November, 4th, 11th, 18th and 25th December, and 8th, 15th, 22nd and 29th January, copies of which can be obtained at the offices of THE SOLICITORS' JOURNAL, 94-97, Fetter Lane, E.C.4.

Public Local Inquiries and Procedure thereat.

By R. C. MAXWELL, B.A., LL.D.

PARLIAMENT has shown an increasing tendency in recent years to trust the public departments with duties of a semi-judicial nature which involve and require for their proper discharge the holding of public local inquiries, either by inspectors attached to the particular department immediately concerned or by some other qualified person.

Probably the Ministry of Health holds more inquiries, and in that connexion is concerned with a larger variety of questions, than any other Department. Thus, to take a few examples, they hold inquiries on applications by local authorities under the Public Health Acts, the Local Government Acts, and various other statutes, in regard to water supply, street and other public improvements, sewerage and sewage disposal works, outbreaks of epidemic disease, port and sanitary administration, compulsory purchase of land for public health and local government purposes, and default by a local authority in connexion with their sanitary duties. Many important inquiries are held under the Housing and the Town Planning Acts of 1925, and all applications for provisional orders to amend a local Act containing provisions within the scope of the Public Health Act must be considered at a public inquiry. The inquiries are held by an engineering or medical inspector or other official of the department, seldom or never by an outside person.

The Privy Council hold inquiries by a commissioner appointed *ad hoc* on applications by urban district councils for a charter of incorporation; and the Home Office similarly hold inquiries for the division or re-division of a borough into wards, after the number of such wards has been fixed by the Privy Council. The Home Office may, but are not bound to, hold inquiries regarding applications for the alteration, increase or decrease, of the electoral divisions of a county.

The Minister of Transport is empowered, by s. 20 of the Ministry of Transport Act, 1919, to hold such inquiries as he considers necessary or desirable for the purposes of the Act. Under powers transferred from other departments, he also holds inquiries relating to roads, light railways and motor traffic. The Board of Trade may hold inquiries regarding the administration by a local authority of its statutory duties under the Weights and Measures Acts, also as to applications for loans for gas undertakings and in connexion with various other functions of the department.

Some of the most important inquiries in recent years have been those held by the Electricity Commissioners. Section 33 of the Electricity (Supply) Act, 1919, authorises them to hold, or cause to be held, such inquiries as they consider necessary or desirable for the purposes of the Act. These relate generally to proposals for the formation of joint electricity districts and to applications for borrowing powers in connexion with new electricity undertakings or the extension of existing undertakings.

The provision last cited empowers the Commissioners to require by order any person to attend as a witness and give evidence or produce documents at the inquiry, subject to the payment of the reasonable expenses of his attendance; further, the Commissioners, or the person holding the inquiry, may take evidence on oath, and for that purpose may administer oaths.

Inspectors acting at public inquiries for the Minister of Health are also empowered, by s. 21 of the Poor Law Amendment Act, 1847, as applied to inquiries other than poor law inquiries, by s. 296 of the Public Health Act, s. 116 of the Housing Act, 1925, and other enactments, to summon persons before them for examination on any matter pertaining to the subject of the inquiry or for the purpose of producing and verifying upon oath any books, contracts and accounts of the local authority in anywise relating to such subject. The same provisions authorise and empower the inspector holding the inquiry to administer oaths.

The power to summon witnesses and examine them on oath is in fact seldom or never used in connexion with local inquiries. It is found in practice that all the parties interested in the subject of an inquiry appear voluntarily and readily submit themselves to any reasonable examination or cross-examination bearing on the questions at issue.

This fact renders it all the more important that inquiries should be fully advertised or otherwise notified in the area or district affected, as indeed, is almost invariably done in pursuance of statutory or other requirements in the matter.

A local inquiry usually commences with the reading of the notice of inquiry. The clerk to the local authority then puts in a certificate of the due "posting" of the notice, with copies of the local newspapers containing the advertisement, and also, usually, a statistical statement containing particulars of the population, rateable value, outstanding debts and other matters relevant to the subject under consideration.

The clerk of the local authority, or his representative, then outlines his case, calls his witnesses—who are subject, of course, to cross-examination by any opponents of the application. The opposition similarly submit their case, and the clerk of the local authority is invariably allowed a reply on the whole case, whether or not legal questions are involved.

No rules have been laid down by statute or by the courts prescribing the procedure to be followed at local inquiries; nor, so far as we are aware, has any public department prescribed a specific procedure for the conduct of inquiries, apart from giving confidential instructions, it may be, to their own officers. A question as to the admission of hearsay evidence is raised at times. In regard to this, and to many other such questions, it is clearly advisable that the general rules and principles laid down by the courts in reference to the conduct of ordinary litigation should be followed, and a wise inspector will endeavour to do so, without, however, acting too rigidly on those rules and principles, and without so applying them as to exclude the evidence of "the man in the street." Such an one comes, it may be, with a grievance against the local authority, or possibly, he has a material point which he has not the skill to submit in appropriate form. He must be listened to, within limits, but with patience. It is better that an inquiry should be prolonged through the

verbosity or irrelevancies of witnesses than that the inspector should allow the impression to prevail that persons "interested" in the subject of the inquiry have not had all reasonable opportunities of putting forward their views. The essence of a local inquiry is that it affords, or should afford, to all and sundry who may desire to appear thereat, an opportunity of representing their views on the subject of the application, without legal costs and without being subject to the handicap of complying with precise legal rules of procedure.

The poster or advertisement of a local inquiry almost invariably states that "any persons interested" in the matter thereof may appear and be heard. Question is sometimes raised at inquiries as to who are "persons interested." On this point reference may be made to a *dictum* of Lord CAMPBELL, C.J., in *R.* v. *The Inhabitants of Bedfordshire*, 4 E. & B. 535, 541. The *dictum*, though applied in another connexion, seems applicable to local inquiries. The term "interest," he said, does not mean "that which is interesting from gratifying curiosity or a love of information or amusement, but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected." Construing this *dictum* widely, it may be laid down that, generally speaking, any ratepayer, or local government elector, and possibly also any resident, though neither a ratepayer nor a local government elector, would normally be entitled to claim that he is "interested" in the subject-matter of a local inquiry.

As to the employment of counsel to represent the local authority at an inquiry, the old Local Government Board always discouraged this course. "We have observed," they stated in their annual report for the year 1900-1901, "that in recent years the practice of employing counsel to represent local authorities at inquiries held by our inspectors has been growing to a somewhat serious extent, entailing considerable expense upon the ratepayers of the districts on behalf of which they are engaged. The object of the inquiries held by our inspectors is not, as a rule, to afford opportunity for the discussion of intricate points of law, in the elucidation of which the assistance of counsel would, no doubt, be of great service, but to ascertain the facts relating to the matters forming the subject of inquiry in the particular case. For this purpose it appears to us that the information which the officers and members of the council and the other persons interested in the matter of the inquiry are able to give the inspector should be sufficient."

(To be continued.)

The Abatement of a Public Nuisance.

IT may be interesting to consider a problem which came before the French Courts recently and which was noted in our issue of 15th January (71 SOL. J., p. 59). An association of music-hall managers claimed damages from three students who had defaced revue posters; the students pleaded in defence that the posters were licentious and that they were justified in defacing them. The plaintiffs were non-suited in the court of first instance, and in the Court of Appeal they were not permitted to claim the reparation of any damage which they had suffered in consequence of their own illegal act.

A similar problem never seems to have troubled our courts, but it may be interesting to consider whether the authorities, such as they are, do not lead us to the conclusion that our courts would be compelled to award damages to the plaintiffs in this case.

Early authorities permit the abatement of public nuisances by any member of the public: *James* v. *Hayward*, 1630, Cro. Car. 184; *R.* v. *Wilcox*, 1690, 2 Salk. 458. But a series of decisions which culminated in *Mayor of Colchester* v. *Brooke*, 1845, 7 Q.B.D. 339, laid it down that a public nuisance may not be abated by a private individual unless it does him special damage. As DENMAN, C.J., put it (p. 377): "A public nuisance becomes a private one to him who is specially and in some particular way inconvenienced thereby, as in the case of a gate across a highway which prevents a traveller from passing, and which he may therefore throw down; but the ordinary remedy for a public nuisance is itself public, that of indictment; and each individual who is only injured as one of the public can no more proceed to abate than he can bring an action." This decision has been followed in a few cases the facts of which are substantially similar, e.g., *Dimes* v. *Petley*, 1850, 15 Q.B.D. 276; *Bagshaw* v. *Buxton*, 1875, 1 C.D. 220; *Black* v. *Bateman*, 1853, 18 Q.B.D. 876; and *Campbell Davys* v. *Lloyd*, 1901, 2 Ch. 518.

But in all these cases the public nuisance bears no moral turpitude—to obstruct a highway or waterway is indictable but pardonable. It does not therefore seem unreasonable o award damages against a defendant who has negligently abated such a nuisance; it caused him no special inconvenience and it was not *ad magnam perturbationem pacis*. The defendant is substantially in the position of a defendant who, in an ordinary action for negligence, has failed to make out a defence of contributory negligence—the plaintiff and himself are not in *pari delicto*.

But if we ask whether a plaintiff whose public nuisance is manifestly *contra bonas mores* can turn to our courts for damages against a wrongful and negligent abator, we shall apparently find no direct authority to guide us. Nevertheless, so long as the indictment remains the proper remedy for public nuisances of all kinds, we must be driven to the conclusion that there is no logical reason to deny damages to *any* plaintiff who has perpetrated a public nuisance and suffered damage by the illegal and negligent abatement thereof.

A Conveyancer's Diary.

Sale of a Barred Entail without the Execution of a Vesting Deed.

An extremely useful decision was recently made by Mr. Justice Astbury in *Re Alefounder*, reported *infra*, p. 123. The question raised was whether it is necessary to have a vesting deed executed before an entailed interest can be so barred as to enable an effective disposition to be made of the fee simple. The learned judge came to a conclusion which, with respect, we conceive to be unimpeachable from the point of view of law and most helpful from the point of view of practice.

Section 13 of the S.L.A., 1925, provides that "where a tenant for life . . . has become entitled to have a . . . vesting deed . . . executed in his favour, then until a vesting instrument is executed . . . pursuant to this Act in respect of the settled land, any purported disposition thereof *inter vivos* by any person other than a personal representative (not being a disposition which he has power to make in right of his equitable interests or powers under a trust instrument), shall not take effect except in favour of a purchaser of a legal estate without notice," etc. Mr. Justice Astbury in *Re Alefounder* showed that this provision does not apply to facts such as those before him. The disentailing of the land brought the settlement to a termination; the land thereby ceased to be settled land. Further, the disposition after the disentail was not a disposition under the S.L.A., to which alone in the learned judge's opinion s. 13 applies.

It is, however, we think, open to question whether or not s. 13 is confined in its operation to dispositions under the S.L.A., 1925, for s. 112 (2) only applies "unless the contrary appears," and it is certainly arguable that the use of the words, "any purported disposition thereof inter vivos *by any person*," shows a contrary intention, as the only persons who

can effect dispositions under the Act are tenants for life and statutory owners, and s. 13 is meant to apply to all persons. This query, however, does not affect the first reason on which Astbury, J., rested his decision.

The natural corollary to *Re Alefounder* and the construction of s. 13 therein adopted is that if under any disposition or number of dispositions the whole equitable fee simple in land vests absolutely and beneficially in a person of full age, the land ceases to be settled land; the person, having become so entitled to the equitable fee simple, can ask for a conveyance of the legal estate under S.L.A., 1925, s. 7 (5), and the estate owner trustee in whom the estate became vested *quâ* tenant for life under the L.P.A., 1925, is not prohibited by S.L.A., 1925, s. 13, from conveying the legal estate though no vesting instrument has been executed.

Vesting of Estates held by Persons in Undivided Shares.

It is often a problem demanding considerable skill in the display of "mental gymnastics" to locate the legal estate in land which was held in undivided shares immediately before the commencement of the L.P.A., 1925.

It is the purpose of this Article to discuss a few cases in which difficulty has in practice been experienced in locating the legal estate affected by the transitional provisions contained in Pt. IV of the 1st Sched. to the L.P.A., 1925.

Case I.

Suppose land was held on the 31st December, 1925, as to a moiety by A and B on trust for X for life, etc., and as to the other moiety by C on trust for X and Y. What is the result of the vesting provisions?

One of two views is arguable:—

(1) That the land was vested in trustees (A, B and C) in trust for persons (X and Y) entitled in undivided shares, and that, therefore, para. 1 (1) of Pt. IV applied.

But is that really so? For para. 1 (1) to apply the *entirety* of the land must have been vested in trustees, etc. It seems that in our case what was vested in A and B was a moiety and in C another moiety, and that the *entirety* was not vested in anyone.

Further, it will be observed that "if the entirety of the landed *is vested* in trustees . . . in trust," etc., then the result of the vesting provision, if there is no incumbrance, is that "the land *shall be held* by such trustees," etc. In other words, there is to be no vesting of the land by virtue of the particular provision but only a continuation of the *status quo ante*. It is not contemplated that the trustees shall have a legal estate in the entirety which was not formerly vested in them. This may be seen all the clearer by way of contrast with the expressions used in cl. (*a*) of sub-para. (1), which contemplates a vesting in the trustees of an estate which was not already held by them.

(2) It is conceived, therefore, that para. 1 (1) does not apply, and that as neither sub-para. (2) nor sub-para. (3) apply, the legal estate must have passed to the Public Trustee under sub-para. (4).

A similar difficulty arises where the undivided shares are held by two different sets of personal representatives or by one set of trustees and another set of personal representatives. In those cases also, it seems, the land became vested in the Public Trustee under sub-para. (4).

In fact in the case of personal representatives the argument that para. 1 (1) is inapplicable is considerably strengthened by the concluding words of the sub-paragraph: "subject in the case of personal representatives, to their rights and powers for the purposes of administration."

In this type of case it is naturally important to know in whom the legal estate actually became vested; for if it is in the trustees or personal representatives, no appointment of new trustees may be necessary at all.

(To be continued.)

Landlord and Tenant Notebook.

Compensation for Disturbance.

The case of *Westlake* v. *Page*, 1926, 1 K.B. 298, which was recently before the Court of Appeal, raised some important points of law with regard to compensation for disturbance under s. 12 of the Agricultural Holdings Act, 1923.

In October, 1923, the landlord of a holding gave the tenant notice to quit on the 25th March, 1925, stating, however, in the notice that he had no desire to terminate the tenancy if the tenant agreed to pay an increased rent, or, in the alternative, to have the rent determined by arbitration. In March, 1924, the tenant informed the landlord that he could not pay the rent demanded, and later, in February, 1925, gave the landlord notice of his intention to claim compensation for disturbance, writing at the same time that he was willing to allow the landlord to withdraw the notice to quit provided the question of rent was immediately submitted to arbitration. To this request, however, the landlord did not accede. One of the questions in issue was, whether the tenant had not disentitled himself to compensation by refusing, or within a reasonable time failing to agree to the demand for arbitration as to the rent made by his landlord, in accordance with s. 12 (1) (*e*) of the Agricultural Holdings Act, 1923. Section 12 (1) (*e*) is as follows: "Where the tenancy of a holding terminates by reason of a notice to quit given by the landlord and in consequence of such notice the tenant quits the holding, then unless the tenant . . . (*e*) has, on or after the first day of January, 1921, refused, or within a reasonable time failed to agree to a demand made to him in writing by the landlord for arbitration under this Act as to the rent to be paid for the holding as from the next ensuing date at which the tenancy could have been terminated by notice to quit, given by the landlord at the date of the said demand . . . *and unless the notice to quit states that it is given for one or more of the reasons aforesaid*, compensation for the disturbance shall be payable by the landlord to the tenant in accordance with the provisions of this section."

Bad Notice.

One of the points taken on behalf of the landlord was that the notice to quit given by the landlord was a bad notice, inasmuch as it was a conditional notice, and that accordingly, since the tenancy had not been effectively terminated, the section did not apply and the tenant was not entitled to compensation. The Court of Appeal, however, held that even a bad notice, if accepted by the tenant, would be sufficient. Thus Bankes, L.J., said (*ib.*, at p. 304): "It seems to me that if a notice to quit is given, *whether it be a good or a bad one, and it is accepted as a good notice by the tenant, who quits the holding in consequence of it*, the case comes within the language of the section" (i.e., s. 12, *supra*).

It was further argued on behalf of the landlord that the tenant was not entitled to compensation, since he had failed within a reasonable time to agree to the landlord's request for arbitration as to the rent. If s. 12 (1) of the Agricultural Holdings Act, 1923, is examined, it will be found that all the paragraphs, (*a*) to (*f*), with the exception of para (*e*), the paragraph under consideration in *Westlake* v. *Page*, state expressly that in order to be disentitled to compensation, the tenant must have been in default "*at the date of the notice*," so that the paragraphs require that the tenant should have been in default prior to the notice to quit. Furthermore, s. 12 (1) is governed by the concluding words *which require the notice to state that it has been given for one or more of the reasons enumerated in* paras. (*a*) to (*e*). The Court of Appeal accordingly held in *Westlake* v. *Page* that inasmuch as there had been no refusal or failure on the part of the tenant *prior to or at the date of the notice to quit*, to agree to a demand for arbitration as to the rent, the tenant was not debarred from claiming compensation notwithstanding that subsequently he failed to agree within a reasonable time after the service

of the *notice to quit*, to agree to the landlord's demand for arbitration.

In his judgment, *ib.*, at p. 305, Bankes, L.J. said: "I think the landlord would have been entitled to say that the tenant had failed to agree to his demand in writing for arbitration. But it is not enough to deprive the tenant of his right to compensation in that he failed to agree with that demand, unless the notice stated that it was given in consequence of that failure, that being the only condition in the sub-section on the breach of which the landlord in the present case relies. And the notice does not state that it was given for that reason. At the time when the notice was given the tenant had not had the opportunity of complying with the demand, for no such demand was made on him, until he got the notice to quit. In those circumstances, it is impossible to say that the notice complies with the provisions of the statute. It is plain that the section demands that the notice, if it is to be one which will disentitle the tenant to compensation, must be given after the breach of one or more of the six conditions specified in the section has happened.

The landlord's proper course is to give the tenant two notices, first, a preliminary notice, requiring him to pay an increased rent or agree to arbitration within a specified reasonable time, taking care that that reasonable time shall expire before the commencement of the twelve months, which under s. 25 s-s. 1, is the necessary period of a valid notice to quit; and then, if that preliminary notice is not complied with, he can follow it up with a notice to quit the holding."

Correspondence.

Highway Acts.

Sir,—With reference to the articles which are appearing in your columns on the Highway Acts, may I be permitted to mention a difficulty which arises on s. 64 of the Highways Act, 1835. This section enacts that no tree, bush or shrub shall hereafter be planted on any carriage way or cartway or *within fifteen feet* from the centre thereof.

The question is whether the prohibition is absolute, or does it only refer to encroachments on land part of the highway, although not metalled, see ss. 63 and 69.

There are a large number of ancient carriage ways, especially in the older towns, of considerably less width than 30 feet, bounded by gardens of dwellinghouses. If this section is to be construed literally, and by itself, there is nothing to prevent the surveyor from requiring the removal of fruit trees and bushes planted in a garden within fifteen feet of the centre of the carriage-way, in an extreme case even if planted on the inside of the garden wall.

Canterbury. PERCY MAYLAM.

Re Official Searches.

Sir,—It has only just been brought to our notice that the fee for search at the Land Registry has been reduced from five shillings to two shillings per name searched against at one address, which upon enquiry of the Land Registry we have ascertained became operative on the 1st July last. We have been sending five shillings per name on each occasion, and our attention has never been drawn, nor have we seen any reference in your journal, to the reduction. We respectfully suggest that this should be brought to the notice of solicitors by you.

St. Albans, Herts. STANLEY ROBINSON & COMMIN.
31st January.

[The Land Charges Fees Order, 1926 (dated 22nd June, 1926), which effected the change above referred to, was published in THE SOLICITORS' JOURNAL on the 17th July, 1926 (70 SOL. J., p. 822).—ED. *Sol. J.*]

The Small Tenements Recovery Act, 1838.

Sir,—I suggest that a reference to the text of this Act will amply vindicate the answer to *Q.* 578. After the determination of the tenancy it provides (s. 1) that if the "tenant or (if such tenant do not actually occupy the premises, or only occupy a part thereof) *any person by whom the same or any part thereof shall be then actually occupied* shall neglect or refuse to quit," then it shall be lawful for the landlord to cause "*the person so neglecting or refusing to quit*" to be served with a written notice, &c., &c. The tenant's sister is thus clearly within the words. In *Brown* v. *Newmarch*, cited by your correspondent on p. 102, there never had been a tenancy.

"X.Y.Z."

Restrictive Covenants—Registration.

Sir,—With reference to *Q.* 626 answers in this week's SOLICITORS' JOURNAL, will you please say what is the position in the following case:

On 30th June, 1926, land is conveyed to A subject to certain restrictive conditions as to user which are set out in the conveyance.

The conditions are not registered at the time against A.

A builds houses on the land and on 23rd August, 1926, conveys one to B, who mortgages on the 24th August. In consequence of a search being made by B's solicitors, the omission to register is mentioned to A's solicitor. The latter then registers the conditions on behalf of the vendor to A, but at a date subsequent to the 24th August.

Are the conditions binding against B and his assigns? In his conveyance he covenants to observe same but by way of indemnity only.

Nuneaton, P. DIXON.
24th January.

[The question raised by our correspondent raises a point of such importance and general interest that we have taken the opportunity to discuss the matter at some length in "The Conveyancer's Diary" on p. 114 *supra*.—ED., *Sol. J.*]

Gifford v. *Dent*.

Sir,—In the current number of THE SOLICITORS' JOURNAL, p. 83, there appears the report of *Gifford* v. *Dent*, in which it is observed that *Bidermore* v. *Dimmer*, 1903, 1 Ch. 158, is distinguished.

As a matter of fact, the report intrinsically does not make clear the distinction, but what I really am writing to point out is that there are two obvious misprints—the plaintiffs' name is Bickmore and the defendant Dimmer. I happen to remember this case well, as I was one of the counsel for the plaintiff in *Hope Brothers* v. *Cowan*, cited in your report. I need hardly say I indicate these misprints in no carping spirit, but to assist in maintaining the admirable service your splendid reports afford to the practitioner.

Liverpool. BERTRAM B. BENAS.
25th January.

[We thank our correspondent for his remarks of appreciation and for drawing our attention to the misprints and hope our readers will make the necessary corrections.—ED., *Sol. J.*]

LAW OF PROPERTY ACTS.

POINTS IN PRACTICE.

Questions from Annual Subscribers are invited and will be answered by an eminent Conveyancer. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4. The name and address of the Subscriber must accompany all communications, which should be typewritten (or written) on one side of the paper only and be in triplicate. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post.

SETTLED LAND—CONVEYANCE OF INTEREST OF REVERSIONER TO TENANT FOR LIFE—PROCEDURE.

656. *Q.* Under marriage settlement existing before 1926, A is tenant for life and B tenant in fee in remainder of Whiteacre, whilst B is tenant in tail of Blackacre. Both Whiteacre and Blackacre are subject to an annuity created by the settlement. No vesting deeds have been executed. B wishes to make over his interest in both estates to A. Is it possible to do this so that A can get a legal and beneficial estate in fee simple in both estates subject only to the annuity. If so, how should it be done?

A. As to Whiteacre: On 1st January, 1926, A took the legal estate in fee simple by virtue of the L.P.A., 1925, 1st Sched., Pt. II, paras 3 and 6 (*c*) and B's reversion became an equitable estate under s. 1 (3). If B conveys his equitable interest to A, the latter will have the legal and beneficial estates subject to the annuity, but the land still remains settled land under the S.L.A., s. 1 (1) (v), subject however to the provisions of the L.P.(Am.)A., 1926.

As to Blackacre, B may disentail, but he can only convey the legal estate in the land as a whole in accordance with the S.L.A., 1925, e.g., by sale or exchange under s. 38. He may convey his equitable right to receive the profits to A, see for example Enc. F. & P., vol. XV, prec. 116, p. 642, but he does not in such case divest himself of his legal estate and powers: see ss. 104 (1) and 111. A Will in such case be protected by ss. 104 (4) and 111. Further, if he disentails he becomes entitled to an estate in fee simple subject to an annuity falling within L.P.(Amend.)A., 1926, and this he can convey to A. Hence A can acquire the legal and beneficial estate in fee simple on both estates.

TRUST FOR SALE—NO POWER TO POSTPONE—DELAY IN EXERCISE—APPOINTMENT OF NEW TRUSTEES.

657. *Q.* By his Will dated 1891, A B devised his real estate to his wife, and C D and E F upon trust to permit his wife to receive and take the rents and profits thereof (less repairs and insurance) during her life for her separate use, and from and after the decease of his wife upon trust to sell his real estate subject to such conditions as his trustees should think fit, and upon trust to stand possessed of the proceeds and to divide the same into two equal moieties, and as to one of such shares to invest the same and to pay the interest thereof to his daughter, G H for life, and on her death to realise the investments and divide the same equally amongst G H's children, and as to the other half to his daughter I J for life, and then for division amongst her children. Testator authorised investment of trust moneys in real or government securities in England, and appointed his wife and the said C D and E F executors. Testator died in 1892, when his Will was proved by all executors. His wife died many years ago, and the two surviving executors have never realised the real estate, but have continued to pay the net rents to G H and I J equally. C D died this year, and E F desires to appoint another trustee to act along with him. In view of the fact that the real estate was never realised on the death of testator's widow as provided by the Will (which contains no power to postpone) what steps should be taken to complete the appointment of a new trustee. Is any vesting deed necessary or will a straightforward appointment of a new trustee by E F suffice? If not, how should the appointment be effected?

A. Whatever remedies any beneficiary may have against E F or the estate of C D for failing to exercise the trust for sale directly after the death of the testator's wife, it remains exercisable, see L.P.A., 1925, s. 23, and may now be postponed under s. 25. In the circumstances, E F can appoint a co-trustee, vesting the property in both by express or implied vesting declaration under the T.A., 1925, s. 40 (1) (*a*) or (*b*), and then they can sell as trustees. Since under the S.L.A., 1925, s. 1 (7) added by the L.P. (Am.) Act, 1926, the land was never settled land after 1925, the S.L.A., 1925, does not apply and no vesting deed should be executed.

L.P.A., 1925, 1ST SCHED., PT. IV, PARA. 1 (4) (iii)—VESTING IN NEW TRUSTEES.

658. *Q.* Seven persons of full age were on the 31st December, 1925, tenants in common of freeholds which vested in the Public Trustee on the 1st January, 1926. A deed has since been executed appointing the first four as trustees in place of the Public Trustee, but there was no vesting declaration therein. Having regard to the wording of Sched. I, Pt. IV (iii) of the L.P.A., 1925, is the legal estate vested in these four trustees and, is a vesting declaration necessary before a conveyance on sale?

A. By the amendment made to the above sub-section in the Schedule to the L.P.A.(Amend.) A., 1926, upon any appointment thereunder, the land by virtue of the Act vests in the new trustees. So no further step is necessary.

MORTGAGEE OF LEASEHOLDS—SALE UNDER POWER—SETTLED REVERSION—WHETHER VESTING DEED NECESSARY.

659. *Q.* By his will, proved in 1895, a testator gave all his estate to his trustees upon trust to sell one of his leasehold houses to pay two legacies, and subject thereto he directed his trustees to stand possessed of the residue of his estate upon trust to pay the rents to his wife during her life, and after her death to pay the rents equally between his daughter and his son during their joint lives with limitations over. The testator's widow died in 1912. The testator's estate now comprises a number of leasehold houses in respect of which there is no trust for, or power of sale in the will. Under Orders of the court in 1914 and 1916 the present trustees of the will have borrowed moneys required for the repair of the leasehold property upon a mortgage of 1915, and a further charge of 1918 upon the leasehold houses. The power of sale under the mortgage is exercisable, and the mortgagees wish to sell one of the houses to the ground landlord. Subject to the payment of the interest under the mortgage and further charge, the rents of the leaseholds are now payable to the assignees of the daughter of the testator, and to his son in equal shares. For the purposes of the sale by the mortgagees under their statutory power of sale is it necessary that a vesting deed should be executed, and if so who should be parties to it?

A. An argument may perhaps be made under the L.P.A., 1925, s. 89 (1), that, since conveyance may be made "in the name of the estate owner in whom it is vested," there is an implied condition that such estate owner has power to convey, which would in turn necessitate a vesting deed in the case of a tenant for life. The opinion is here given, however, that neither the mortgagee exercising his power of sale nor the purchaser are concerned with the title to the equity of redemption at all, see s. 106 (1). Section 89 (6) applies the whole section to pre-1926 mortgages.

SETTLED LAND—SOLE TRUSTEE—VESTING DEED.

660. *Q.* A testator appointed A and B to be his executors and trustees, and devised to them all his real and personal estate upon trust for A for life, and on her death for B for life with remainder to C absolutely. A died several years ago, and the testator has died this year. B, who is sole personal representative and S.L.A. trustee, and also tenant-for-life, wishes to sell the real property. Our view is that B should appoint a second trustee and make a vesting assent before selling, but we are in doubt as to whether the appointment should precede the vesting assent or *vice versa*. Will you please advise us on this point with reasons? It has been suggested that B could sell as personal representative without either appointing a second trustee or executing an assent. Doubtless the purchaser would be protected by s. 36 (8) of the A.E.A., 1925, in this case, even though he knew the sale was unnecessary, but it would appear that the personal representative would be committing a breach of trust if there were sufficient free estate to pay debts &c. Could this difficulty be surmounted by getting the remainderman to join in the conveyance or is there any objection to that?

Which of the two methods is advised?

A. Concurrence is expressed with the view that the appointment of a new trustee should precede the vesting deed if the tenant for life is to sell, see reasons given in answers to Questions 231 and 269, pp. 523 and 600, Vol. 70. The reasoning in the second paragraph is also approved, but the suggested expedient of joining a remainderman in the conveyance is not in accordance with the L.P.A., 1925, s. 42 (1) (*b*). B might of course be made safe if C gave him a written direction or authority to sell as personal representative. But, if A's estate is administered, sale by B as tenant-for-life is the proper method.

UNDIVIDED SHARES—TRUST FOR SALE—UNREASONABLE REFUSAL TO EXERCISE.

661. *Q.* Two new trustees, X and Y have been appointed in place of the Public Trustee under para. 1 (4) (iii) of the 1st Sched. to L.P.A., 1925, of property which had on 1st January, 1926, vested in Public Trustee upon the statutory trusts as being property which was vested on 1st January, 1926, in X and Y (as administratrix of her late husband) as tenants in common in equal shares, subject as to part of the property to a mortgage and to a rent charge. Y now wishes to sell a part of the property which is not subject to the mortgage or rent charge and which is vacant land producing no income for £7,000. X, who for some awkward reason does not wish to sell, refuses to sell only at a much higher figure, which makes it impossible to find a purchaser. Are there any means since the Partition Acts have been abolished of compelling X to consent to the sale of the property at a reasonable figure?

A. In selling or delaying sale, X and Y act as trustees, and, if either is unreasonable in doing so, any person interested in the property may invoke the court to administer the trust. The way out by partition under the L.P.A., 1925, s. 28 (3) will probably be impracticable, for agreement as to the amount to be brought into account is not likely in the circumstances.

SETTLED LAND—TRUST FOR OR POWER OF SALE.

662. *Q.* A died in 1890, and by his Will, which was duly proved by X Y and B, the executors therein named, he devised ten houses to his trustees upon trust to pay the rents and profits to his daughter, B, during her life, and from and after her decease, in trust for her children attaining the age of twenty-one years. She had issue only one son C, who predeceased her in 1905, having attained the age of twenty-one years. C by his Will gave to B the reversion in one of the ten houses, and the remainder of his estate to his widow, D. B has died during the present year, having by her Will given all her property to D and appointed her sole executrix. D is now obtaining probate of B's Will. No vesting deed in favour of B was ever executed. The surviving trustee of A's Will is Z. Under A's Will it is provided that "after the decease of B I declare that my Trustees shall sell the said property at any time if they are of the opinion it will be to the advantage and benefit of the persons entitled thereto." It is presumed that until B's death the property was settled land. After B's death ought the last-mentioned provision to be treated as an immediate binding trust for sale or is it only a power of sale. If the former does the property cease to be settled land, and will it be sufficient for D, who elects to take the property in specie to obtain an assent from Z to herself? We presume that it would be unnecessary to have an assent by Z to himself and then a conveyance by Z to D. If on the other hand the above provision is considered to be only a power of sale, the property appears to be settled land, and in this case must Z be deemed to have been appointed by B her special executor in regard to the settled land (Administration of Estates Act, 1925, s. 22 (1)) and consequently must Z obtain probate of B's will limited to the settled land? Will it then be sufficient for D, who is now absolutely entitled to obtain a conveyance from Z (S.L.A., s. 7 (5))?

A. On 31st December, 1925, B was tenant for life of the houses (since, if there was a trust for sale, it did not arise in her lifetime) and tenant in fee of the remaining one, of which her son devised her the reversion. That house passed on B's death to D, as executrix, and she can either sell as such, or, after formal assent to herself, as beneficial owner. The other nine houses passed to B's special representatives. For the purpose of ascertaining who these special representatives were, the issue between trust for or power of sale is immaterial, for, given that the trustees of the original will had either, they are indicated by S.L.A., 1925, s. 30 (1) (iv). It is arguable that, since D had complete equitable dominion over the property after B's death, and could elect to take unconverted, the trustees of the original will had ceased to have any exercisable powers under it. The opinion here given, however, is that the sub-section applies to them, and, whether that is right or wrong, if in fact probate is granted to Z as surviving or sole trustee under the A.E.A., 1925, s. 22 (1), he will have full powers as such special representative in accordance with the principles laid down in *Hewson* v. *Shelley*, 1914, 2 Ch. 13, His duty, after paying or providing for death duties, is as directed by the S.L.A., 1925, s. 7 (5) quoted above.

COPYHOLDS—VESTED IN EXECUTORS ON 1ST JANUARY, 1926—SETTLED LAND—ASSENT TO TENANT FOR LIFE—EXTINGUISHMENT AGREEMENT—COMPENSATION.

663. *Q.* A is tenant for life under the S.L.A., by virtue of a settlement deemed to be created by the will of a testator, who died in 1925, and A, B and C are executors and trustees of the will, and are appointed trustees for the purposes of the S.L.A., and they were admitted as trustees of copyhold properties of the testator prior to 1926. They have discharged their duties as executors and distributed the personal estate, and have executed a vesting deed (L.P.A., 1925), declaring that the freehold properties of the testator, including the enfranchised lands formerly copyhold, are vested in A for life, and that deed is intended to be produced as an "assurance" to the stewards of the manors within six months (L.P.A., 1922, s. 129). The fees claimed by the stewards on production of the assurance are from £1 4s. to £7 7s. in the various manors. The trustees propose to have the manorial incidents extinguished by a compensation agreement (L.P.A., 1922, s. 138). The stewards enquire the ages of the trustees for the purpose of ascertaining the amounts of compensation under the scale of the 13th Sched., Pt. II of that Act. An opinion is requested as to (1) whether it is correct to base the compensation in manner provided by para. 16 of the 13th Sched., Pt. II (i.e., by reference to the joint lives of the three trustees) or upon the life of A, the tenant for life, the land being settled land?

A. On 31st December, 1925, the copyholds were vested in the executors, who presumably, since their testator died in that

year, had not then administered the estate. This being so, they were not divested of their estate, either under the 12th Sched. of the L.P.A., 1922, or the 1st Sched. of the L.P.A., 1925. The vesting deed under the S.L.A., 1925, s. 8 (4) (*a*), has, if effective, vested the legal estate in fee simple in A. On 1st January, 1926, the trustees were tenants within the L.P.A., 1922, see 12th Sched., para. (8) (*a*), and s. 189. On the execution of the vesting deed A, as deriving title under them, became the tenant as defined by ss. 143 and 189. The compensation agreement under s. 138 is between the lord and the tenant, and, therefore, A should enter into it. Since the land is no longer held by joint tenants, para. 16 of Pt. II of the 13th Sched. has ceased to apply, and the compensation should be based on A's life.

ADVERTISEMENTS FOR CREDITORS—T.A., 1925, s. 27 (1)—L.P. (AMEND.) A, 1926, SCHEDULE.

664. *Q.* Please give me your views on what seems to be now the necessary statutory notice or notices to be given to creditors before the distribution of an estate. Clearly by the first above-mentioned Act it must be a two months' one, and in any event, in the *London Gazette*, but unless there is land (*vide* the Amendment Act), is there any legal necessity for an advertisement in any local paper? It would almost seem to be wise to insert a notice in a local newspaper, whether there is land or not, but one has to bear in mind the cost of advertisements in these days.

A. The minimum of advertisement, in accordance with the above statutes, is (1) Once in the *London Gazette*; (2) If the estate includes land (see definition T.A., 1925, s. 68 (6)), once in a local newspaper; and (3) Any other notices which a court would direct in a special case. This last requisite imports the practice of the Chancery Division (as the previous enactment did that of the Court of Chancery) under R.S.C., O. 55., rr. 45-7, and personal representatives and their advisers are therefore required to have knowledge of that practice at their peril. So far as it modifies statutory requirements, the fullest discussion of it, perhaps, appears in *re Bracken*, 1889, 43 C.D. 1. As to cost, which, of course, depends on length, the questioner will find a very concise precedent for an advertisement in the Enc. F. and P., vol. vi, p. 503, prec. 25.

EASEMENT—L.C.A., 1925—REGISTRATION.

665. *Q.* A is the owner of certain freehold property, which comprises (*inter alia*) two cottages with gardens. These cottages obtain their water from a pump and well which is situated in the garden which is occupied with one of the cottages. A is now selling both cottages and gardens, and the contracts purport to give the purchaser of one cottage and garden a right to take water from the said pump, and the purchaser of the other cottage and garden will be subject to such right. Is it necessary to register a land charge in these transactions, and would it make any difference if such right was existing now, and is not newly created?

A. No, in either case. An easement in fee simple is an interest capable of subsisting at law, see L.P.A., 1925, s. 1 (2) (*a*), and takes its place on a title by its own inherent strength.

WILL—TRUST FOR SALE—NO TRUSTEES—UNSOLD FREEHOLD—PROCEDURE.

666. *Q.* A testator devised and bequeathed his real and personal estate to his wife, A, and his brother-in-law, B, upon trust to pay and discharge his debts and expenses, and to permit his wife "to have the management of his estate and to receive the interests and profits thereof during her natural life, she keeping my dwelling-house in good and tenantable repair," and from and after the decease of his said wife, he did "order and direct that my trustees or trustee for the time being do and shall absolutely sell and dispose of my real estate." The trustees were to stand possessed of the proceeds of sale for the testator's five children (or their issue), all whom are of full age, but with the exception of one, resident abroad. A and B were also appointed executors and proved the will of the testator, who died in 1920. They also discharged his debts and the death duties. B died in March, 1924 (testate), A in December, 1924 (intestate), when apparently the trust for sale came into operation, so that on 1st January, 1926, the dwelling-house was no longer settled land. A purchaser has now been found and it is suggested that all that is necessary is that the administratrix of A's estate (who is the child of the testator, still resident in England) should appoint two trustees of the dwelling-house, which is all that the testator's estate now consists of, under s. 36 of T.A., 1925, and that such trustees can make a good title. Can the administratrix appoint herself one of such trustees? The assent of the executors to the devise to themselves upon the trusts indicated may be assumed. The procedure suggested does not, however, seem consistent with the answer to *Q.* 463, and confirmation is desired before adopting it.

A. The course suggested is quite in order. The answer to *Q.* 463 was based on an error in date, which was corrected in *Q.* 531, p. 1108, which also furnishes the answer to the present question. If A received the rents of the dwelling-house, or lived in it for four or five years, the assent of the executors would be presumed: see *Wise* v. *Whitburn*, 1924, 1 Ch. 460.

REGISTERED LAND—INFANT REGISTERED WITH ABSOLUTE TITLE.

667. *Q.* On the purchase, since 1st January, 1926, of a freehold house, in London, the transfer was made by inadvertence to an infant, who was accordingly registered as the proprietor, with an absolute title. In view of s. 2 (1) of L.R.A., 1925, such registration appears to be ineffective and apparently the defect will not cure itself on the infant's attaining twenty-one. The purchase money was provided by the infant's father, who desired the property to be registered in her name. Is the land still vested in the vendor upon trust for the infant, and must a vesting deed and trust deed be prepared and executed by the vendor at the purchaser's expense, or is it vested in the Public Trustee, and who can appoint new trustees in his place?

A. By s. 3 (xi) of the L.R.A., 1925, "legal estates" are restricted to estates authorised to subsist by the L.P.A., 1925, so, by reason of s. 1 (6) of the latter Act, no infant can take a legal estate in registered land. Consequently, on the transfer to the infant, s. 19 (1), of the L.P.A., 1925, operated as provided in the S.L.A., 1925, s. 27 (1). The infant has, however, on a void transfer and through the honest mistake of various parties, been registered as proprietor, with the consequence under the L.R.A., 1925, s. 3 (xx), and s. 69 (1), that she is deemed to have the legal estate vested in her. The rights of a transferee in good faith from her might occasion difficulty, but this problem does not arise. Pursuant to s. 82 (1) (*g*), the register may be rectified, and in this simple case the registrar will presumably see his way to put things right without recourse to the court. The father's direction to register in her name may be regarded equivalent to a beneficial gift to the daughter in fee simple, with the consequence that the land is settled land: see S.L.A., ss. 26 (1) and 1 (2) (in respect of registered land the S.L.A., 1925, is to be read subject to the L.R.A., 1925: see s. 119 (3) of the former Act, but there is nothing in the L.R.A., 1925, to prevent the operation of the two sections of the L.R.A., 1925, above quoted). The appropriate procedure would appear to be either for the father to be registered as proprietor, and then to execute a trust instrument, or possibly, if he executes a trust instrument appointing trustees, the registrar may see his way to register such trustees at once, as statutory owners under ss. 86 (1) 91, and 111 (1) of the L.R.A., 1925. If the estate is settled on the daughter in fee simple, she will be entitled to a transfer and to be registered as proprietor on coming of age, under the S.L.A., s. 7 (5).

Reviews.

The Encyclopædia of the Laws of Scotland. Consultative Editor, The Rt. Hon. The Viscount DUNEDIN, P.C., G.C.V.O. General Editor, I. N. WARK, K.C., LL.B., Sheriff of Argyle. Assistant Editor, A. C. BLACK, K.C., LL.B. Vol. 2: Assignation to Canon Law. Edinburgh: W. Green & Sons. pp. xxv and 565. 57s. 6d.

The second volume of this great work of reference has now appeared and the high standard set by the first volume is fully maintained. Indeed, in one direction there is an advance, for the law is revised and brought up to 31st October, 1926.

The articles are clear and concise, and are written in a style which attracts the reader's interest. That on the Cabinet contains one of the clearest essays on that system of government, as seen in operation to-day, that we have read for some time; indeed we doubt if its development during the last twenty years, including the curious digression of the war period, has ever been so well set out in such short space.

A table of contents preceding each of the longer articles, coupled with a short, but effective, index, renders it easy to pick out any point of law required without undue waste of time. The general style of the previous volume has been retained, as also the high standard of printing and production; the table of cases could be improved by the addition of references therein.

The volume is stated on the cover to be "Assignation to Canon Law," but it really starts with "Arrestment, Wrongful," and there are no less than sixteen headings before "Assignation" is reached; it is true that all these headings consist merely in references forward or backward and that Assignation is the first article in the volume, but in our opinion it may be found misleading and prove a little inconvenient to those consulting the work in a hurry. We observe, however, that the learned editors are not alone in this practice, for other publications of a similar nature seem to adopt the same method.

F.

Books Received.

Ministry of Health Circular on The Housing (Rural Workers) Act, 1926. 1927. H.M. Stationery Office. 2d. net.

Ringwood's Principles of Bankruptcy. With an Appendix containing the Bankruptcy Act, 1914, as amended by the Bankruptcy (Amendment) Act, 1926; the Bankruptcy Amendment Rules, 1915 to 1926; the Deeds of Arrangement Act, 1914, as amended by the Administration of Justice Act, 1925; the Deeds of Arrangement Rules, 1925; the Bills of Sale Acts; and portions of other Acts and Rules affecting Bankruptcy Law and its Administration. 15th Edition. By ALMA ROPER (of the Middle Temple). With the assistance of G. L. HAGGEN, M.A., B.C.L. (of the Inner Temple). Foolscap 4to. pp. lvi and 717. 1927. Sweet and Maxwell, Ltd., Chancery Lane. £1 2s. 6d. net.

The Law and Practice relating to Letters Patent for Inventions. By THOMAS TERRELL, K.C. Seventh Edition. Revised and re-written by COURTENEY TERRELL (of Gray's Inn) and D. H. CORSELLIS (of the Inner Temple). Medium 8vo. pp. xl and 637. 1927. Sweet & Maxwell, Ltd., Chancery Lane. £3 3s. net.

Minnesota Law Review. Journal of the State Bar Association. Vol. II, No. 2, January, 1927. The Faculty and Students of the Law School of the University of Minnesota. 60 cents (per number) net.

The Organisation and System for Preparing the Draft Valuation List (the Rating and Valuation Act, 1925). ARTHUR L. FORRESTER (solicitor). 1927. Demy 8vo. pp. 31. Waterlow and Sons, Ltd., London Wall and Birchin Lane. 1s. 6d. net.

The Incorporated Accountants' Journal (the official Organ of the Society of Incorporated Accountants and Auditors). Vol. XXXVIII. No. 5. February, 1927. Published by the Society at 50, Gresham Street, E.C.2. 12s. 6d. per annum (post free).

Central Law Journal. Vol. 100. No. 2. 14th January, 1927. Central Law Journal Company, St. Louis, Mo. 25c. per number.

Prevention of Bribery. No. 133. January, 1927, The newsheet of the Bribery and Secret Commissions Prevention League, Incorporated, 22, Buckingham Gate, S.W.1.

Monthly and Yearly Highest and Lowest Prices, with a Diary of Principal Events in 1926. Uniform with Stock Exchange's Ten Year Record, 1926. January, 1927, issue. Fredc. C. Mathieson & Sons, 16, Copthall Avenue, E.C.2. 2s. 6d. net.

Midmonthly Supplementary List of Unquoted Securities in which Dealings are Marked (including Mines) on the Stock Exchange. Fredc. C. Mathieson & Sons. Subscription 42s. per annum.

Financial Notes, A Cumulative Alphabetical Summary (Summaries of New Companies, Appeals for Capital, Reconstructions, etc., etc.). Fredc. C. Mathieson & Sons. Subscription £1 1s.

W. P. H.

Obituary.

MR. EDGAR BRIERLEY.

The death occurred with remarkable suddenness on Tuesday, the 25th ult., of Mr. Edgar Brierley, O.B.E., Stipendiary Magistrate of Manchester, following a sudden seizure a few hours after his return to his home in Rochdale, of which town he was a native. He had been engaged that day in his usual duties at the Manchester City Police Court, where he had presided for twenty-three years. Mr. Brierley, who was in his seventieth year, came of an old Lancashire family, being the fifth son of the late Mr. James Brierley of Rochdale. He was educated at Rugby and University College, Oxford, and was called to the Bar in 1882, joining the Northern Circuit. He practised for the next twenty years in Manchester and at the Salford and Bolton Sessions and Court of Record, during which period he occasionally acted as deputy to Judge Parry at the Manchester County Court. In anticipation of the retirement of the late Mr. F. J. Headlam, his predecessor, he was at the end of 1902 appointed by the Home Secretary to be "Second Stipendiary Magistrate." The appointment was permanent, but the office was not, as it was not intended that there should be two paid magistrates at the City Court, and whilst Mr. Headlam was retained as the City Magistrate, the bulk of the work fell on Mr. Brierley and, on the death of the former, he assumed full responsibility for the administration of justice in the Stipendiary Magistrates' Court. He was a member of the Royal Commission on Divorce set up in 1909, being chosen for his wide experience of matrimonial cases, and he continued to sit under the presidency of Lord Gorell until 1912, when its reports were published. He was one of the signatories to the majority report, the framing of which owed much to his skill and comprehensive knowledge of the subject. On the constitution of the Local Military Tribunals, Mr. Brierley was appointed to preside as Chairman at Manchester, and this he continued to do until the Tribunal ceased to function in 1918, having heard something like 20,000 claims for exemption from military service. In recognition of his work on that Tribunal he was made an Officer of the Most Noble Order of the British Empire in 1918, his name appearing in the New Year's Honours List. He will, however, be best remembered for his untiring labours in the City Police Court, during the period of which the administration of criminal justice had undergone so many important

changes, whilst the volume of work in his court increased enormously. On the bench Mr. Brierley was recognised for his fairness and patience with all classes of prisoners, and the confidence that they would receive justice tempered with mercy at his hands was perhaps proved by the exceptionally large number of cases in which the accused elected to be tried by the magistrate, but which might otherwise have gone on to the sessions. His sound judgment, coupled with an extensive acquaintance with all branches of criminal law, was appreciated alike by both branches of the profession practising before him.

On Tuesday, before the ordinary business of the court (over which the late Stipendiary had presided with such distinction for so long a period), there was a special assembly of magistrates, members of both branches of the profession, police and police court officials, etc., when the Lord Mayor of Manchester (Alderman J. H. Swales), who presided as Chief Magistrate, said that Mr. Brierley had endeared himself to everyone who had come into contact with him by his unfailing kindness and courtesy. He was not only ever ready to help new magistrates in connexion with their duties, but he was always kind and considerate to prisoners and might very fairly be described as a typically straightforward English gentleman, whose death was a distinct loss to the City of Manchester.

Mr. Jessel Rycroft (speaking on behalf of the Bar), Mr. W. R. W. Murray and Mr. T. H. Hinchliffe (representing the solicitors practising in the Court), and the Chief Magistrate's Clerk (Mr. R. Bell), all associated themselves with the Lord Mayor's remarks. Sympathetic references were also made before commencing the business of the day in their respective courts, by Mr. P. W. Atkin, the Stipendiary Magistrate for Salford, and by His Honour Judge T. B. Leigh at the Manchester County Court.

Mr. Brierley was closely associated with the Anglican Church, and in addition to being Vicar's Warden at the Parish Church of Rochdale he was Vice-Chairman of the Parochial Council. Passionately fond of outdoor exercise, he was a great walker and on one occasion walked from his home in Rochdale to his duties in Manchester, during the General Strike. He was a keen golfer and was a member of the Rochdale Golf Club of which he was a past captain.

He leaves a widow and one son and one daughter, namely, Mr. Philip Edgar Brierley, a barrister practising on the Northern Circuit, and Mrs. William Kay, wife of the Vicar of Cresswell, Derbyshire.

Mr. ROBERT DICKINSON.

The death took place on the 23rd ult., at his residence, Styford Hall, Stocksfield, in the County of Northumberland, at the age of fifty-eight, of Mr. Robert Dickinson, the senior partner in the well-known firm of Messrs. Dickinson, Miller and Turnbull, solicitors, Cross House, Westgate-road, Newcastle-upon-Tyne. The practice was founded by the deceased's father, Mr. Robert Dickinson, who afterwards took into partnership Mr. John Edward Miller. Deceased joined the firm shortly before his father's death, which took place in the year 1890, Mr. A. M. Turnbull being subsequently admitted into the partnership. Mr. J. E. Miller died in the year 1904, since which date the practice has been carried on by the deceased and Mr. Turnbull.

Mr. HENRY TAYLOR.

Mr. Henry Taylor, M.A., solicitor, of 2, Pepper-street, Chester, passed away on Monday, the 3rd ult. Admitted in 1868, he had practised in that historic city for many years, holding amongst other public appointments that of Clerk to the Justices for the Broxton Division of Cheshire, Registrar of the Flintshire County Court, and Clerk to the Commissioners of Taxes. Mr. Taylor was senior partner in the old-established firm of Boydell & Taylor, and had for many years been a member of The Law Society.

His Honour CHARLES DROMGOOLE, K.C.

The death was announced in Dublin, on Thursday in last week, of His Honour Judge Charles Dromgoole, M.A., LL.D., K.C., Circuit Judge for the Metropolitan City and County of Dublin. He had only recently resumed his judicial duties after a protracted holiday taken for the purpose of restoring his health. The only surviving son of the late Charles Dromgoole, of Newry, County Armagh, he was educated at St. Colman's College, Newry, Blackrock College and University College, Dublin. Called to the Irish Bar in 1894, he went the North-East Circuit, and took silk in 1910. He was County Court Judge of Kerry from 1913 to 1920, and of Carlow, Kildare, Wexford and Wicklow from 1920 to 1924.

Mr. F. G. COLE.

Mr. Frederick George Cole, solicitor, of Oxford-chambers, 71, Lord-street, Liverpool, died there on Saturday, the 8th ult., at the age of seventy-one. Admitted in 1879, he gave much valuable service of a voluntary character to charitable work.

Mr. A. GOUGH.

Mr. Alfred Gough, solicitor, of 56, Newhall-street, Birmingham, died there on Tuesday, the 11th ult., at the age of eighty-one. Articled to Mr. C. H. Edwards, he was admitted in 1880, and was well known in commercial and educational circles. Mr. Gough was a member of The Law Society.

Mr. R. W. WOODLEY.

Mr. Ralph Woodley Woodley, solicitor, of Ashburton, Devon, died there recently. Admitted in 1908, he was for some time a member of the firm of Messrs. H. M. & R. W. Firth.

W. P. H.

Court of Appeal.

No. 1.

Welton *v.* **Welton.** 11th January.

Divorce—Allotment of Alimony *Pendente Lite*—Petition by Wife—Wife found Guilty of Adultery on Previous Petition by Husband—Husband's Petition Dismissed—Guilty of Conduct Conducing—Jurisdiction of Court—Means of Wife—Judicature (Consolidation) Act, 1925 (15 & 16 Geo. 5, c. 49), s. 190, s-s. (3).

Under the Judicature (Consolidation) Act, 1925, *s.* 190 (3), *the court, on a petition for divorce, has the same power to make interim orders for the payment of alimony to the wife as the court has in proceedings for judicial separation. A wife petitioned for divorce on the ground of her husband's adultery, having been some years before respondent to a petition by her husband, which was dismissed on the ground that she had been guilty of adultery, her husband by his cruelty and other conduct towards her had conduced to such adultery.*

Held, that the wife being a competent suitor, the court had full power, notwithstanding her previous adultery, to grant her petition for alimony pendente lite, *and as on the evidence she was barely able to support herself and her two children out of her own resources, the registrar was right in making such a grant.*

Appeal, by leave of the court, from a decision of Lord Merrivale, P. The petition was one by a wife for divorce on the ground of her husband's adultery. The petitioner was married to the respondent on 9th March, 1909, and two children were born. In 1918 the husband petitioned for divorce on the grounds of his wife's adultery. At the hearing it was proved that the wife had committed adultery, but Lord Coleridge dismissed the petition because the husband had been guilty of cruelty and conduct conducing to the wife's adultery. On 29th June, 1926, the wife filed a petition charging her husband with adultery. He admitted the charge, but made a counter-charge against his wife. The wife then filed a petition for alimony. The husband's sworn answer was that his means

were not as great as they had been represented, and that because of her adultery the wife was not entitled to alimony. The petitioner, in her affidavit, said that she was only just able to earn enough to support herself and her two children, one of whom was an invalid; to pay the rent of a single room; and that the man with whom she had been living had died some eighteen months before. The registrar ordered the payment of 10s. a week alimony. The husband appealed. Two points were raised by counsel for the appellant—(1) that where the wife had been guilty of adultery there was no power in the court to grant her alimony; and (2) that where the spouses had in fact been separated for some years, and the wife had been able to maintain and support herself and her children the court ought not to order alimony *pendente lite*.

Lord HANWORTH, M.R., having stated the facts, said that the argument was that the power was only given to the same extent as the court could order in proceedings for judicial separation, and no more, and that that power depended on s. 22 of the Matrimonial Causes Act, 1857, which was as follows: "In all suits and proceedings, other than proceedings to dissolve any marriage, the said Court shall proceed and act and give relief on principles and rules which in the opinion of the said Court shall be as nearly as may be conformable to the principles and rules on which the Ecclesiastical Courts have heretofore acted, but subject to the provisions herein contained and to the rules and orders under this Act." It was important to notice the proviso at the end of the section, "subject to the provisions herein contained . . ." One of the new principles laid down by the Act, and found in s. 31, was that the court was not bound to pronounce a decree for dissolution if the petitioner had been guilty of wilful neglect or misconduct conducing to the respondent's adultery. It was said that, according to the cases such as *Otway* v. *Otway*, 13 P.D. 141, and *Everett* v. *Everett*, 1919, P. 298, a judicial separation could only be granted where the wife had been free from all matrimonial misconduct, and that, as the present petitioner came into court with a decree against her finding that she had been guilty of adultery, she must fail if the court were to test her position by the question whether she would be able to get a decree for judicial separation. But the cases referred to were cases where the adultery was considered *simpliciter* and without any question of a disability on the part of the other spouse by reason of his conduct having conduced to it. In *Everett* v. *Everett*, *supra*, the court refused a decree on the ground that the petitioner was in fact still living in adultery. Neither of the cases dealt with the position of persons applying for an order for alimony *pendente lite*. Here there was a case in which adultery *simpliciter* could not be charged against the wife, as it was plain from the order of Lord Coleridge that he did not regard the husband as free from fault. Therefore the cases which had been cited by counsel for the appellant were not really in point, and did not restrict the power of the Divorce Court in the matter of ordering the payment of alimony *pendente lite*. The court could not hold that it could not grant alimony merely because of the fact that the wife was guilty of adultery. The President spoke of the wife as a competent suitor, and her husband could not rely on her previous adultery as preventing her from taking proceedings herself. It appeared, therefore, that s. 190 (3) of the Judicature (Consolidation) Act, 1925, operated, and there was power in the court to make an order for alimony *pendente lite*. On the second point, the court again could not neglect the effect of the conduct of the husband in conducing to his wife's adultery. The Registrar had abundant material upon which to make the order, and the appeal must be dismissed, with costs.

SARGANT and LAWRENCE, L.JJ., delivered judgment to the same effect.

COUNSEL: *Acton Pile*, *Rewcastle*, and *Hutchinson*; *Merriman*, K.C., and *T. J. O'Connor*.

SOLICITORS: *Mills*, *Lockyer*, *Church & Evill*; *Edmond O'Connor & Co.*

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

In re **Bower-Williams.** 21st January.

BANKRUPTCY—HUSBAND AND WIFE—DEATH OF WIFE INTESTATE—LETTERS OF ADMINISTRATION TAKEN OUT BY HUSBAND—SHARES IN COMPANY OWNED BY DECEASED WIFE—SETTLEMENT BY HUSBAND UPON TRUSTS IN FAVOUR OF CHILD OF THE MARRIAGE—PROPERTY ACCRUED TO HUSBAND "IN RIGHT OF HIS WIFE"—BANKRUPTCY ACT, 1914, 4 & 5 Geo. 5, c. 59, s. 42.

The property which, upon the death of its owner, a married woman, intestate, has accrued to the husband by the fact of his taking out letters of administration to her estate, is property which has accrued to him "in right of his wife," within the meaning of s. 42 of the Bankruptcy Act, 1914; therefore a settlement made by him of that property upon a child of the marriage is not void as against the trustee in his bankruptcy by his becoming bankrupt within two years.

Appeal from a decision of Astbury, J., reported 70 SOL. J. 1221.

A marriage took place on 20th May. 1913, and on 30th March, 1925, the wife died intestate. Letters of administration were granted to the husband, and on 4th June, 1925, he made a voluntary settlement in favour of the daughter of the marriage, he himself being one of the trustees of the settlement. The property settled consisted of shares in a private company which had belonged to the wife, but as this was a company the holding of shares in which was restricted by the articles to members of his wife's family, the shares were transferred into the name of the husband and retained by him, he covenanting with the trustees of the settlement to hold the shares upon trust to pay to them out of the income during the lifetime of the daughter and for her benefit the yearly sum of £200, the balance, both as to income and corpus, being declared to be in trust for himself. Due notice of the settlement was given to the company. Upon 15th April a receiving order was made against the husband, and upon 26th April he was adjudicated bankrupt. The trustee in the bankruptcy claimed to be entitled to the settled shares, but the trustees of the settlement, while admitting the claim in regard to the husband's interest in it, claimed that the interest of the daughter was protected by s. 42 (1) of the Bankruptcy Act, 1914, which directs that settlements made within twe years of a subsequent bankruptcy shall be void as against tho trustee in bankruptcy, except, *inter alia*, " . . . a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife . . . " The settlement trustees claimed that the shares in question had accrued to the husband in right of his late wife. The trustee in bankruptcy contended that the property taken by a husband in the estate of an intestate wife by reason of his being administrator was property taken by him in his own right as such, and not property taken by any existing right of hers. Astbury, J., upheld the contention of the settlement trustees. The trustee in bankruptcy appealed. The court, without calling upon counsel for the respondents, dismissed the appeal.

Lord HANWORTH, M.R., said that counsel had suggested that since the Married Women's Property Act, 1882, the husband had really no rights in his wife's property, and that the words 'in right of his wife" only applied in the case of a wife married before that date, but that was a wide contention. The Statutes of Distribution took away from an administrator the right to take beneficially any residue which fell into his hands, but the Statute of Frauds, in s. 25, directed that this should not extend to the estates of *femes coverts*, and that their husbands should have the administration of the same as they had had before; apparently, therefore, the husband had, *jure mariti*, the right to take the wife's property which came into his hands by the administration. Of course, in certain cases, such as these shares, the property must be reduced into possession, but the husband's right to do so was clearly the *jus mariti*. In *In re Lambert's Estates*; *Stanton*

v. *Lambert*, 1888, 39 Ch. D. 626, and *Smart* v. *Tranter*, 1890, 38 W.R. 530; 43 Ch. D. 587, both decided after the Married Women's Property Act, 1882, the judgments showed clearly that administration should be granted to the husband, and that any other person taking them out did so as trustee for the husband, and that the latter was not quite in the position of one of the next-of-kin, but in that of a person who had a right to claim the administration and to reduce the wife's personal property into his possession, and to hold it beneficially, because he was the husband. It appeared, therefore, that the husband here took the shares *jure mariti*, as his wife's administrator, the daughter's life interest was good, and the appeal must be dismissed with costs.

Lords Justices SARGANT and LAWRENCE gave judgments to like effect.

COUNSEL: *Tindale Davis*, for appellant; *Whinney*, for respondents.

SOLICITORS: *Osborn & Osborn*, for appellant; *Teff & Teff*, for respondents.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

Ex parte **Brewster.** 25th January.

LOCAL GOVERNMENT—POOR LAW—BOARD OF GUARDIANS—GUARDIAN A PRIVATE PATIENT IN HOSPITAL MAINTAINED OUT OF RATES—PAYMENT OF ALL COSTS BY GUARDIAN—WHETHER DISQUALIFIED FROM CONTINUING A GUARDIAN—RECEIPT OF "UNION OR PAROCHIAL RELIEF"—LOCAL GOVERNMENT ACT, 1894, 56 & 57 Vict. c. 73, s. 46, sub-ss. (1) (*b*) and (7).

By s. 46 of the Local Government Act, 1894, *sub-s.* (1) "*A person shall be disqualified for being elected or being a member or chairman of a council of a parish or of a district . . . or of a board of guardians if he . . . (b) has within twelve months before his election, or since his election, received union or parochial relief.*" *By sub-s.* (7) "*Where a member of a council or board of guardians becomes disqualified . . . the council or board shall forthwith declare his office to be vacant . . .*" *Where a member of a board of guardians, since election as such, becomes a private patient at a hospital maintained by the guardians out of the rates, and pays in full for his or her maintenance at the hospital, and for every privilege and advantage received by him or her at the hospital, he or she does not thereby receive "union or parochial relief," within the meaning of s. 46 of the Local Government Act*, 1894, *and is not disqualified for being a member of the board of guardians.*

Appeal from the Divisional Court (Salter and Talbot, JJ.) The appellant, Harry George Brewster, of Bexley Heath, was a local government elector in the Bexley Heath district and the Dartford Union. He had applied to the Divisional Court for a rule *nisi* directed to the Dartford Guardians to show cause why a writ of mandamus should not issue commanding them to declare vacant, under sub-ss. (1) (*b*) and (7) of s. 46 of the Local Government Act, 1894, the office of guardian held by Mrs. Ellen Moira Pyne, of Erith, on the ground that since her election as guardian, she had received "union or parochial relief," within the meaning of s. 46 of the Local Government Act, 1894. It appeared that while she was a guardian, Mrs. Pyne was for some time a patient in a hospital at Dartford, which was maintained by the guardians out of the rates. She had, however, paid to the guardians in full for her maintenance at the hospital and for every advantage which she received at the hospital. The Divisional Court refused the rule, holding that since the guardians had been paid in full by Mrs. Pyne for every advantage and privilege received by her at the hospital, there was no evidence on which it could be said that Mrs. Pyne had received "union or parochial relief" within the meaning of s. 46 of the Act of 1894. The applicant appealed.

The Court (Lord HEWART, C.J., and BANKES, L.J.) held that there was no ground for interfering in the matter. The Divisional Court had properly exercised their discretion. Appeal dismissed.

COUNSEL: *R. C. Maxwell.*

SOLICITORS: *May, Sykes & Co.*

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re **Alefounder's Will Trusts: Adnams** *v.* **Alefounder.**

Astbury, J. 14th January.

SETTLED LAND—ESTATE OWNER—EQUITABLE TENANT IN TAIL—BARRING THE EQUITABLE ENTAIL—CESSER OF SETTLEMENT BY BARRING ENTAIL—VESTING DEED—POWER TO SELL LEGAL FEE WITHOUT—SETTLED LAND ACT, 1925 (15 Geo. 5, c. 18), ss. 13, 112, s-s. (2)—LAW OF PROPERTY ACT, 1925 (15 Geo. 5, c. 20).

A person who on 1st of January, 1926, *was estate owner and equitable tenant in tail, can bar his equitable entail and make a valid disposition of the legal estate without a vesting deed having been previously executed in his favour.*

Section 13 of the Settled Land Act, 1925, *does not apply to such a case because on the disentail the land ceases to be settled land, and the section only applies to dispositions under the Settled Land Act*, 1925.

Originating Summons. This was an originating summons taken out by Settled Land Act trustees asking whether, if an estate owner who is also equitable tenant in tail bars his equitable entail he can make a valid disposition of the legal estate without a vesting deed having been previously executed in his favour. The facts were as follows: R. S. Alefounder, died on 16th December, 1864, and on the construction of his will and in the events which happened the defendant became on 16th December, 1925, entitled as adult legal tenant in tail in possession to the estates settled by the will, with remainders over, but without any overriding trusts or incumbrances. On the 1st January, 1926, when the new law came into force he was estate owner in legal fee simple, and equitable tenant in tail, and the question which arose on this summons was whether, if he barred his equitable entail he could make a valid disposition of the legal estate without a vesting deed having been previously executed in his favour. It was suggested that in spite of the new law a vesting deed was not necessary.

ASTBURY, J., after stating the facts said: "Under s. 1 and Schedule I, Pt. I, of the Law of Property Act, 1925, the defendant's estate tail has become an equitable estate tail in possession, which, having regard to s. 133 he can disentail without enrolment. Under s. 20, s-s. (1), cl. (i), and s. 117, s-s. (1), cl. 28 of the Settled Land Act, 1925, which latter clause was incorporated in s. 205, s-s. (1), cl. 26 of the Law of Property Act, 1925, he is deemed a tenant for life, with the consequent power of requesting a vesting deed under Sch. II, para. 1, s. 2 of the Settled Land Act, 1925. He therefore, became estate owner in legal fee simple under Sch. I, Pt. II, ss. 3, 5, 6 (*c*) of the Law of Property Act, 1925, and he holds the estates in trust for himself as equitable tenant in tail with remainders over. If he bars his entail, and thus puts an end to the settlement, can he make a valid disposition of the property without first having a vesting deed? The difficulty, if any, is caused by s. 13 of the Settled Land Act, 1925, which provides that where a life tenant has become entitled to have a principal vesting deed executed in his favour, then until a vesting instrument is executed pursuant to the Act in respect of the settled land any purported disposition thereof *inter vivos* by any person other than a personal representative (not being a disposition of his equitable interests under a trust instrument), shall (with an immaterial exception), not take

effect but operate in contract only. But it has been rightly contended that this section does not apply for the following two reasons: First, on the disentail in this case the land would cease to be settled land. Secondly, a disposition under s. 13, means and only means a disposition under the Settled Land Act, 1925 (see ss. 112, s-s. (2)). It is indeed difficult to see how a vesting deed containing the particulars required by s. 5 could be made after the cesser of the settlement. For these reasons there will be a declaration that the defendant Alefounder on disentailing can dispose of the property without previously obtaining a vesting deed.

COUNSEL: *H. H. King, H. S. G. Buckmaster.*

SOLICITORS: *Albert M. Oppenheim r* for *Stewart, Rouse Vulliamy & Son*, of Ipswich; *Merton Jones & Lewsey.*

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

Societies.

The Law Society.

SPECIAL GENERAL MEETING.

A Special General Meeting of The Law Society was held on Friday, the 28th ult., the President, Mr. A. H. Coley (Birmingham) occupying the chair.

LEASEHOLD REFORM.

Mr. C. L. NORDON (London) moved "That this meeting invites the Council to hold an inquiry into the leasehold reform legislation recently foreshadowed by the Prime Minister, and expresses the view that, whilst, in isolated cases, it may be equitable to create a right to compensation on the termination of a lease where the lessor directly takes the benefit of the improvements effected or goodwill created by an outgoing lessee, any general establishment of the right to renewal of expiring leasehold terms or of the principle of compensation in default would violate the sanctity of contract; clog free dealing in property; and lead to uncertainty and depreciation of values without any corresponding advantage." He said that much had appeared of late in the newspapers, legal and otherwise, on the subject, and quoted at length from an address by Mr. Baldwin, delivered at the annual meeting of the Conservative party at Scarborough in November last, in which he spoke of the loss by tenants of improvements at the expiration of their leases. He said that the subject bristled with difficulties, that care must be taken that any legislation which might be passed did not bring greater evils, and that there were cases of legitimate grievance and genuine need for reform. Mr. Nordon continued that in face of such a pronouncement solicitors naturally turned to The Law Society, in the hope that they would hold an inquiry. At the Liberal Land Conference in February last year, a resolution was passed advocating the establishment of a tribunal to adjust matters between landlord and tenant, so that leaseholders should have a right to compulsory enfranchisement, or alternatively, to adjustment of the terms of the tenancy, either by renewal release or otherwise, as might seem fair to the tribunal. Many Bills, he said, had been brought into the House of Commons with the object of bringing about leasehold reform, but they had all been dropped. The one thing of great importance to lawyers was that in 1920 a Select Committee of the House of Commons was appointed to deal with the matter, and several associations gave evidence before it, but not The Law Society. He urged that should another opportunity arise the solicitors should not be caught napping. They did not want grandmotherly legislation, which would prevent lessors and lessees making their own contracts, for the lessee was sufficiently protected nowadays if he chose to get advice in making his contract. He added that he would be personally grateful to the Council if they would accept the resolution, as any presentment coming from them would have the greatest weight.

Mr. G. W. HUGH JONES (London) seconded the motion.

Mr. EDWARD A. BELL (London) moved an amendment to substitute for the words "hold an inquiry" the words "consider and report upon," and to omit all the words after "Prime Minister." He urged that the Council should deal with the matter in their annual report to the members. It was, he thought, accepted by most persons that the leasehold system could be remedied. In evidence of that s. 34 of the Law of Property Act enabled one to obtain relief against restrictive covenants, and s. 27 of the Housing and Town Planning Act dealt with various matters between landlord and tenant. For many reasons the subject was one which the Council of the Society ought to consider sufficiently important to find a place in their next annual report.

Mr. F. C. R. DOUGLAS (London) seconded the amendment, urging that any inquiry should be free and unfettered, and not bound by the restrictions contained in the latter part of the motion. It should be remembered, when speaking of the tenant being protected by the advice of his legal adviser, that there was something more potent, namely, the economic circumstances under which the tenant had to bargain with his landlord.

Mr. JOHN GRAHAM (London) supported the amendment, speaking of the conditions which prevailed in the County of Durham, where he practised for fifty years.

The PRESIDENT said the members might well believe that a subject of this importance was certain to receive the careful consideration of the Council; but he thought that the motion was premature. If the Prime Minister acted upon the observations which had been quoted, no doubt a Bill would in due time be introduced in the House of Commons. Following their usual practice, the Council would give the Bill the most careful attention, and he did not doubt would take their constituents into their confidence in regard to it. But he might point out that an inquiry to be complete would involve the calling of witnesses, which would occupy a very large amount of time, and it was not easy to realise the amount of labour that would be imposed upon the Council. For this was not purely a legal question, it involved political and economic issues also. He thought the amendment only indicated the practice which, in the ordinary course of things, the Council would follow, and which he was sure they would feel it their duty to follow in the circumstances.

Mr. LIONEL SPERO (London) opposed both resolution and amendment. Unless, he said, a resolution were passed which showed the determination of the lawyers to assist the Prime Minister in his attempts at reform it would be better not to pass one at all.

Mr. NORDON, in reply, said he did not desire anything more than the President's assurance that any Bill brought in for reform in the matter should receive the consideration of the Council. Having regard to the course the proceedings had taken he would accept the amendment.

The motion as amended was then adopted in the following terms: "That this meeting invites the Council to consider and report upon the leasehold reform legislation recently foreshadowed by the Prime Minister."

LUMP SUM BILLS AND COSTS.

Mr. BELL moved "That the Council do take all necessary and reasonable steps to obtain an amendment to Ord. 65, r. 27, Regulation 38A, which would enable a solicitor at his option to deliver in contentious cases a schedule of disbursements together with a lump or assessed sum to represent the amount of his fees for professional services rendered, such sum to be assessed and certified by the taxing master without requiring delivery of an itemised bill of costs." He observed that the subject was entirely one of domestic concern for the profession and did not affect the public. It was a matter of machinery only. The resolution did not attempt to abolish the old system, but gave to the solicitor, if he were so minded, the option of bringing in a lump sum fee and rendering the same to the master, rather than going through the weary routine of expressing a claim for remuneration by a series of nauseous items. In the case of contentious matters, a solicitor was required to prepare a drearily reiterated bill; why should not solicitors be able to take the opportunity, if they chose, to adopt a shorter method than the present out-of-date system? What he was advocating was purely optional.

Sir CHARLES MORTON (Liverpool), member of the Council, said the subject had received very urgent consideration by the Council some four years ago; he was president at the time and initiated the movement. The Council at that time induced Lord Birkenhead, who was then Lord Chancellor, to set up a Departmental Committee to inquire and report—a confidential report. Mr. Justice Russell was the chairman of that committee, he himself was on the committee as representing solicitors, with the Public Trustee, whilst Sir William Plender and other men were drawn from the commercial body. The committee sat weekly on several occasions, and eventually issued a report in favour of the proposition, and Lord Birkenhead gave directions for a Bill to be prepared for introduction into the House of Commons. The Bill came before the Council and was approved, with certain amendments, and it was printed in its final form. But on the day it was to have been introduced the Government fell. The Council tried on more than one occasion when the new Government came into power to induce the Lord Chancellor of the day to re-introduce the Bill, but failed. When Lord Cave became Lord Chancellor he treated the Bill with great sympathy, but flatly declined to take the responsibility of

introducing it. He suggested that the Council should introduce a Bill in the House of Commons with the view of creating in the public an atmosphere favourable to its principle. The Council considered the matter, but it seemed to them that it was of so technical a character that it was not likely to obtain the support of members of the House of Commons at large. They felt that they were severely handicapped when the Lord Chancellor refused to take the responsibility of introducing the Bill in the House of Lords, and that that was a point against them. The Council decided not to proceed with the Bill at the time, in the hope that at some later date, if not the present Lord Chancellor, some other would take the responsibility of introducing it. That was where the matter rested. It was his personal opinion, though not the opinion of the Council, that there was not the slightest chance at present of promoting a Bill, not only on account of the pressure of various matters, political and social, but of the difficulty of getting members to support such a Bill. He did not think there would ever be sufficient support to carry it through. It would be wiser to continue the present practice until there was a Lord Chancellor in office who was more sympathetic.

Mr. BELL thought that, if the Council were to make representations to the Rules Committee, an insertion of three words in Ord. 65, r. 27, Regulation 38A, would provide an opportunity to a solicitor of exercising the option in contentious cases of delivering lump sum bills of costs. Having heard the remarks of Sir Charles Morton he did not desire to go to a vote.

United Law Society.

A meeting of the Society was held in the Middle Temple Common Room, on Monday 31st ult., Mr. L. F. Stemp in the chair.

Mr. James MacMillan opened, "That in the opinion of this House the case of *Daphne* v. *Shaw*, 49 W.N. 327, was wrongly decided." Mr. G. B. Burke opposed. There also spoke Messrs. A. O. Hughes, W. S. Chaney, Neville Tebbutt, F. B. Guedalla, H. S. Wood Smith, E. H. Pearce and S. Ashley. The opener having replied, the motion was put to the House and was carried by three votes.

Law Association.

The usual monthly meeting of the directors was held at The Law Society's Hall, on Thursday, the 27th January. Mr. J. R. H. Molony in the chair. The other directors present were Mr. J. D. Arthur, Mr. E. B. V. Christian, Mr. P. E. Marshall, Mr. J. F. W. Rider, Mr. John Venning, Mr. Wm. Winterbotham, Mr. W. M. Woodhouse, and the Secretary. A sum of £105 was voted in relief of deserving applicants; thirty-seven new members were elected, and other general business transacted.

Bar Council Election.

The election to fill vacancies upon the Bar Council will take place during the week ending 12th February. The list of candidates nominated is as follows:—

King's Counsel.—Sir Thomas Hughes, Mr. E. A. Mitchell-Innes, Mr. H. Holman Gregory, Sir Herbert Cunliffe, M.P. Mr. G. Thorn Drury, Mr. C. E. Dyer, Mr. A. F. C. Luxmoore, Mr. A. T. Miller, Mr. J. W. Manning, the Hon. Sir Reginald Coventry, Mr. J. E. Singleton, Mr. Rayner Goddard, and Mr. J. D. Cassels, M.P.

Outer Bar.—Mr. Edward Beaumont, Mr. E. W. Hansell, Mr. Alfred Adams, Mr. J. F. Vesey FitzGerald, Mr. St. John G. Micklethwait, Mr. H. T. Wright, Mr. J. W. M. Holmes, Mr. E. H. Tindal Atkinson, Mr. J. Willoughby Jardine, Mr. Walter Hedley, Mr. Hugh L. Beazley, Mr. W. Blake Odgers, Mr. Gerald Dodson, Mr. Albert Crew, Mr. F. D. Levy, Mr. E. A. Godson, Mr. A. H. Davis, Mr. T. M. O'Callaghan, Mr Charles E. Harman.

Law Students' Journal.

Law Students' Debating Society.

At a meeting of the Society, held at The Law Society's Hall, on Tuesday, the 1st inst. (chairman, Mr. E. G. M. Fletcher), the subject for debate was: "That the policy of the western nations towards China does more harm than good." Mr. J. F. Chadwick opened in the affirmative and Mr. Raymond Oliver opened in the negative. The following members also spoke: Messrs. W. M. Pleadwell, C. F. S. Spurrell, F. H. Kwok, Urma Prasada, H. Shanly, Dr. Haas, H. Malone and R. D. C. Graham. The opener having replied, the motion was carried by one vote. There were twenty-three members and three visitors present.

Rules and Orders.

THE COMPANIES (BOARD OF TRADE) FEES ORDER, 1927.
DATED JANUARY 10, 1927.

The Lord Chancellor and the Treasury, in pursuance of the powers and authorities vested in him and them respectively by section 237 of the Companies (Consolidation) Act, 1908,(*) section 2 of the Public Offices Fees Act, 1879,(†) and all other powers enabling him or them in this behalf, do hereby, according as the provisions of the above mentioned enactments respectively authorise and require him and them, make, concur in, and sanction the following Order:—

1. The fees and percentages set out in Tables A and B annexed to this Order in respect of proceedings in the Winding-Up of Companies, shall be taken in the office of the Board of Trade, or of any Official Receiver, or of the Registrar of Companies, as the case may be, in accordance with and subject to the directions contained in the said Tables.

2. Where the head office of the Company being wound up is situated out of England, and the liquidation takes place partly in England and partly elsewhere, or where the Court has sanctioned a reconstruction of the Company or a scheme of arrangement of its affairs, or where for any other reason the Official Receiver satisfies the Board of Trade that the fees in the said Table B would be excessive, such reduction may be made in the said fees as may, on the application of the Board of Trade, be sanctioned by the Treasury.

3. The Order dated the 2nd December, 1903,(‡) prescribing a scale of fees under the Companies (Winding-Up) Act, 1890,(§) and the Order dated the 30th December, 1911,(‖) prescribing a scale of fees under the Companies (Consolidation) Act, 1908, so far as they are still in force, and the Companies (Winding-Up) Fees (Amendment) Order, 1923,(¶) shall be annulled.

4. The fees mentioned in Table A shall be taken in stamps; the fees and percentages mentioned in Table B shall be taken in money.

5.—(1) The documents to be stamped shall be as provided in Table A.

(2) The stamps shall be adhesive stamps over-printed with the words "Companies (Winding-Up)."

(3) The proper officer shall cancel every adhesive stamp by defacing it in indelible ink with a hand stamp bearing the word "Cancelled" and the date of cancelling.

6. Wherever practicable the stamp shall be affixed or the money paid in respect of every fee before the proceeding is had in respect of which the fee is payable.

7. This Order may be cited as the Companies (Board of Trade) Fees Order, 1927, and shall come into operation on the 24th day of January, 1927.

Dated the 10th day of January, 1927.

Cave, C.
Curzon, } Lords Commissioners of
Stanley, } His Majesty's Treasury.

TABLE A.

	Fee. £	*s.*	*d.*	*Document to be stamped.*
1. On an application by a Committee of Inspection to the Board of Trade for a special Bank account	1	0	0	The application.
2. On an Order of the Board of Trade for a special Bank account	2	0	0	The order.
3. On an application by a Liquidator to an Official Receiver acting as a Committee of Inspection	0	10	0	The application.
4. On a bond with sureties ..	0	10	0	The bond.
5. On an application to the Board of Trade— (*a*) under section 15 of the Companies (Winding-up) Act, 1890, or section 224 of the Companies (Consolidation) Act, 1908, for payment of money out of the Companies Liquidation Account; or (*b*) after six months from the date of issue for the re-issue of a lapsed cheque, money order or payable order in respect of moneys standing to the credit of that Account:—				

(*) 8 E. 7. c. 69. (†) 42—3 V. c. 58.
(‡) S.R. & O. Rev. 1904, II, Company, E., p. 165 (1903, No. 1102).
(§) 53—4 V. c. 63. (‖) S.R. & O. 1912, No. 199, p. 35.
(¶) S.R. & O. 1923, No. 893, p. 143.

Where the amount applied for does not exceed £1	0	1	0	The application.
Where the amount applied for exceeds £1 ..	0	2	6	The application.
6. (*a*) On an application to inspect liquidator's statement lodged with the Registrar of Joint Stock Companies under section 15 of the Companies Winding-up Act, 1890, or section 224 of the Companies (Consolidation) Act, 1908 ..	0	1	0	The application.
(*b*) For a copy of, or extract from, such statement, each folio of 72 words or figures..	0	0	4	The copy.
7. For the insertion in the *London Gazette* of a notice relating to a company which is being wound up by the Court ..	0	7	6	The notice.

TABLE B.

I.—*On the audit of the Official Receiver's or liquidator's accounts by the Board of Trade, a fee according to the following scale on the amount brought to credit, including the produce of calls on contributories, but after deducting* (1) *money received and spent in carrying on the business of the company, and* (2) *amounts paid by the Official Receiver or liquidator to secured creditors (other than debenture-holders)* :—

	Per cent.
On the first £5,000 or fraction thereof ..	1½
On the next £95,000 or fraction thereof ..	1
On the next £400,000 or fraction thereof ..	½
On the next £500,000 or fraction thereof ..	¼
Above £1,000,000	⅛

II.—*Where the Official Receiver acts as provisional liquidator only* :—

(*a*) Where no winding-up order is made upon the petition, or where a winding-up order is rescinded, or all further proceedings are stayed prior to the summoning of the statutory meetings of creditors and contributories :—

Such amount as the Court may consider reasonable to be paid by the petitioner, or by the company as the Court may direct, in respect of the services of the Official Receiver as provisional liquidator.

(*b*) Where a winding-up order is made but the Official Receiver is not continued as liquidator after the statutory meetings of creditors and contributories :—

	£	s.	d.
(1) In respect of every 10 members, creditors and debtors, and every fraction of 10 up to 1,000	0	15	0
For every 10 or fraction of 10 above 1,000	0	7	6

Provided that where the net assets of the company, including uncalled capital, are estimated in the statement of affairs not to exceed £500, three-fifths of the above fee only shall be charged.

(This fee to include cost of official stationery, printing, books, forms, and inland postages.)

(2) On the value of the Company's property as estimated in the statement of affairs, after deducting (in cases where a person other than the Official Receiver has, prior to the making of a winding-up order, been appointed Receiver for debenture holders) the amount due to debenture holders :—

	Per cent.
On the first £5,000 or fraction thereof ..	1½
On the next £20,000 or fraction thereof	¾
On the next £75,000 or fraction thereof	½
Above £100,000	¼

III.—*Where the Official Receiver acts as liquidator of the company and a Special Manager is appointed (to include the Official Receiver's services as provisional liquidator)* :—

Such amount as the Court, on the application of the Official Receiver, with the sanction of the Board of Trade, may consider reasonable.

IV.—*In all other cases where the Official Receiver acts as liquidator of the company (to include his services as provisional liquidator)* :—

	£	s.	d.
(1) In respect of every 10 members, creditors, and debtors, and every fraction of 10 ..	1	10	0

Provided that where the net assets of the company, including uncalled capital, do not exceed £500, three-fifths of the above fee only shall be charged.

(This fee to include cost of official stationery, printing, books, forms, and inland postages.)

(2) Upon the total assets, including produce of calls on contributories, realised or brought to credit by the Official Receiver, after deducting sums on which fees are chargeable under number V of this Table, and not being moneys received and spent in carrying on the business of the Company :—

	Per cent.
On the first £1,000 or fraction thereof ..	6
On the next £1,500 or fraction thereof ..	5
On the next £2,500 or fraction thereof ..	4
On the next £5,000 or fraction thereof ..	3
On the next £90,000 or fraction thereof ..	2
Above £100,000	1

(3) On the amount distributed in dividend or paid to contributories, preferential creditors, and debenture holders by the Official Receiver, half the above percentages.

V.—*Where the Official Receiver collects, calls or realises property for debenture holders, or other secured creditors* :—

The same fees as under number IV (2) and (3) of this Table, to be paid out of the proceeds of such calls or property.

VI.—*Where the Official Receiver performs any special duties not provided for in the foregoing Tables* :—

Such amount as the Court, on the application of the Official Receiver, with the sanction of the Board of Trade, may consider reasonable.

VII.—Travelling, keeping possession, law costs, and other reasonable expenses of the Official Receiver, the amount disbursed.

VIII.—On every payment under section 15 of the Companies (Winding-up) Act, 1890, or under section 224 of the Companies (Consolidation) Act, 1908, of money out of the Companies Liquidation Account, threepence on each pound or fraction of a pound to be charged as follows :—

Where the money consists of unclaimed dividends, on each dividend paid out.

Where the money consists of undistributed funds or balances, on the amount paid out.

Legal Notes and News.

Appointments.

Mr. ANTHONY DE FREITAS, O.B.E. (Senior Puisne Judge, Jamaica), has been appointed Chief Justice of British Guiana.

Sir SYDNEY CHARLES KING FARLOW NETTLETON, Kt. (Chief Justice, Cyprus), has been appointed Chief Justice of Gibraltar.

Mr. U. MYA BU, Barrister-at-Law, has been appointed one of the Judges of the High Court of Judicature at Rangoon, increasing the permanent strength of the court from ten to eleven judges.

Mr. PHILIP BERTIE PETRIDES (Attorney-General, Nyassaland), has been appointed a Puisne Judge of the Supreme Court of Nigeria.

Mr. DON ADRIAN ST. VALENTINE JAYEWARDENE, K.C. (District Judge, Colombo), has been appointed a Puisne Justice of the Supreme Court, Ceylon.

The Lord Chancellor has appointed Mr. JOHN FELIX KERSHAW to be the Judge of the Southwark and Greenwich and Woolwich County Courts, in the place of the late Sir Thomas Granger, deceased.

Mr. ARTHUR LOMBE TAYLOR, M.A., LL.B. (Cantab.), has been appointed Recorder of the Borough of Thetford. Mr. Taylor was called to the Bar in 1906.

Mr. ROBERT BOOTH, prosecuting solicitor in the office of Mr. Cecil G. Brown, LL.B. Town Clerk of the City of Cardiff, has been appointed Deputy Town Clerk of Burnley. Mr. Booth was admitted in 1922.

Mr. D. V. O'MEARA, solicitor, Bristol, has been appointed Assistant Solicitor in the office of Mr. Reginald E. Knocker, M.B.E., Town Clerk of Dover. Mr. O'Meara was admitted in 19 .

Mr. W. L. MCCARTY, the Deputy Town Clerk, has been appointed Town Clerk of Stepney in succession to Mr. V. B. Bateson, who resigned the appointment recently.

Mr. MICHAEL FRANCIS JOSEPH MCDONNELL, of the Inner Temple, Barrister-at-Law, has been appointed Chief Justice of the Supreme Court of Palestine.

Mr. McDonnell was educated at St. Paul's School, was a Scholar of St. John's College, Cambridge, and was elected President of the Cambridge Union in 1904. He was appointed an Assistant District Commissioner in the Gold Coast in 1911, Police Magistrate and Inspector of Schools in the Gambia in 1913, Legal Adviser in that Colony in July, 1918, Solicitor-General in Sierra Leone in August, 1918, and Attorney-General in Sierra Leone in 1920.

Resignations.

Mr. H. S. OPPENHEIM, solicitor, who has held the appointment of Town Clerk of Widnes for upwards of thirty-five years and is a freeman of the borough, has tendered his resignation. Mr. Oppenheim, who also practised at Liverpool and St. Helens, was admitted in 1868.

Mr. T. H. MUNSEY, Assistant Town Clerk of Westminster, is resigning that appointment as from 31st March next. Mr. Munsey has completed over forty years' service in London, of which thirty-seven have been with the Westminster City Council and their predecessors the Vestry of St. James, Westminster.

Mr. HENRY RICHARD GILES, solicitor, has resigned his appointment as Clerk to the Ellesmere Rural District Council. Mr. Giles, who was admitted in 1876, also holds the appointment of Clerk to the Ellesmere Urban District Council and to the Commissioners of Land and Income Tax for the Pimhill Division of Salop.

Mr. FRANCIS J. HUNT, solicitor, Romford (Essex), a member of the firm of Hunt & Hunt, solicitors, of that town, who was appointed Clerk to the Justices in 1915, has decided to resign that appointment as from the 31st March next. Mr. Hunt was admitted in 1894.

Mr. V. H. STALLON, solicitor, Clerk to the Sheerness Urban District Council and its predecessors for fifty years is retiring. Mr. Stallon was admitted in 1875.

Professional Announcements.

(2s. per line.)

Mr. A. C. STANLEY-STONE, senior partner in the firm of Messrs. Swepstone, Stone, Barber & Ellis, of Broad Street House, E.C., has been elected Chairman of the City Lands Committee of the City Corporation, and by virtue of this office he becomes the Chief Commoner of the City of London. Mr. Stanley-Stone is also the Master of the City of London Solicitors Company for the current year.

In consequence of the recent death of Mr. Robert Dickinson, the senior partner in the well-known firm of Messrs. Dickinson, Miller & Turnbull, solicitors, Westgate Road, Newcastle-upon-Tyne, the surviving partner, Mr. A. M. Turnbull, is admitting into the partnership Mr. H. G. C. MCCREATH and Mr. A. E. MILLER (son of the late Mr. J. E. Miller, a former partner), each of whom have been associated with the firm for many years, with the intention that later on in the year Mr. R. J. Dickinson, the eldest son of the late Mr. Robert Dickinson (who founded the firm), and is now completing his articles of clerkship, will also be admitted into the partnership later on. The practice will be continued under the present firm name of "Dickinson, Miller & Turnbull."

Messrs. RUTLEY, VINE & GURNEY, Auctioneers, Valuers and Surveyors, announce that, owing to the expansion of their West End business, additional offices will shortly be opened at Nos. 97 & 98, Tottenham Court Road, W. The Rent and Letting Department of their business will still be continued at their old offices, No. 6, George Street, Euston Road, N.W., where their business has been carried on for practically a century.

Professional Partnerships Dissolved.

JAMES BISHOP HARTLEY, CHARLES FREDERICK TOLME BLYTH, THOMAS TOLME BLYTH, and EDWIN ERNEST STANLEY WRIGHT, solicitors, 112, Gresham House, Old Broad Street (Blyth, Dutton, Hartley & Blyth), by mutual consent as from 31st December.

FRANK CHORLTON LINGARD, FRANKLIN DOUGHTY BROWNE, HERBERT WILLIAM MYATT, and CLAUDE FRANK LINGARD, solicitors, 4, New London Street (Lingards, Browne & Myatt), by mutual consent as from 31st December, as far as concerns F. C. Lingard, who retires from the firm. F. D. Browne, H. W. Myatt, and C. F. Lingard will continue to carry on the business under the above style.

JAMES FOYSTER BOWEN, ARTHUR SPENCER JACKSON, and ERNEST CHARLES CURRAN, solicitors, 34, Nicholas Lane, Lombard Street (Wilkinson, Bowen, Jackson & Curran), by mutual consent as from 31st December. J. F. Bowen and A. S. Jackson will continue to carry on business at the above address under the style of Wilkinson, Bowen & Jackson.

HERBERT GARTHWAITE THOMPSON, FRANK BYRON JEVONS, and GERALD EDWARD HILLMAN, solicitors, Tonbridge, Southborough, and Tunbridge Wells, Kent (Thompson, Jevons and Hillman), by mutual consent as from 31st December.

HENRY SHADFORTH, ROWLAND BEEVOR, ARTHUR GODFREY JAMES, Sir JOHN COODE-ADAMS, HUGH ADAMS, CHARLES WHITE TALBOT, MILES BEEVOR, and GEOFFREY COODE-ADAMS, solicitors, Norfolk House, Embankment (Williams & James), by mutual consent as from 31st December, so far as regards H. Shadforth, who retires from the firm. The continuing partners will in future carry on the business under the same style.

EDWARD ELVY ROBB, JAMES READER WELCH, and GEORGE JAMES CULLUM WELCH, solicitors, 19, Bedford Row, W.C. (Elvy Robb & Welch), by mutual consent as from 31st December.

THOMAS LAWRENCE KESTEVEN, JAMES FREDERICK NATHANIEL LAWRENCE, CHARLES RONALD GRAHAM, EDWARD WILLIAM WYKES, CHRISTOPHER HAWORTH BURNE, HENRY FERGUS GRAHAM, and ARTHUR FRANCIS KING-STEPHENS, solicitors, 6, New Square, Lincoln's Inn, W.C.2 (Lawrence Graham & Co.), by mutual consent as from 31st December, so far as regards T. Lawrence Kesteven, who retires from the firm. In future such business will be carried on by J. F. N. Lawrence, C. R. Graham, E. W. Wykes, C. H. Burne, H. F. Graham, and A. F. King-Stephens.

Wills and Bequests.

Lieutenant-Colonel Everett Hind, V.D., solicitor, formerly commanding 2/4th K.O.Y.L.I., of Sloane-court, Chelsea, S.W., left estate of the gross value of £1,243.

Mr. Henry Turner Waddy, of Ashley-gardens, Westminster, S.W., a Metropolitan Police Magistrate since 1917, Recorder of Scarborough, 1913-1917, who died on 4th November, left estate of the value of £608.

MR. JUSTICE ROCHE ON THE CRIMINAL JUSTICE ACT.

In charging the Grand Jury at the opening of the Worcestershire Assizes at the Shire Hall, Worcester, on Thursday in last week, says *The Times*, Mr. Justice Roche drew attention to points arising out of the Criminal Justice Act, 1925. He said that, as the Grand Jury were aware, the summary jurisdiction of justice was considerably enlarged by the Act. That being so, he was satisfied from what he had already seen and heard that there were certain misconceptions which might arise by reason of that fact. The first misconception was that a sort of option was conferred upon an accused person whereby if he chose to be dealt with summarily he ought to be dealt with summarily.

"Well, now," continued his lordship, "that is one of those half-truths which is nearly a whole falsehood. The consent of the accused, from historical and constitutional reasons, is necessary before he can be dealt with summarily, but it does not in the least follow that because he consents to be dealt with summarily he ought to be dealt with summarily. It is not within his choice, and sometimes I find that the obvious preference of an accused to be dealt with in a certain way is a good reason for dealing with him in some other way."

The other misconception was this: that it was supposed to be legitimate to deal summarily with cases of a grave or serious nature; but in truth if one looked at the Act it was obvious that the intention of the Act was that while there were offences ordinarily grave and serious in their nature, yet special circumstances might be present in particular cases to render them not so grave and serious.

"In such cases and in such cases only," said his lordship, "is it legitimate to exercise the rights given by this Act of Parliament? Some people, I think from mistaken motives of kindness or sometimes even out of motives of economy, think it legitimate to deal with grave and serious offences summarily. I think that is a mistake. It is false economy, it is not true mercy, and it is contrary, as I conceive, to this Act of Parliament."

Sexual offences, the judge pointed out, were not brought within the Act even now, and the natural tendency of that would be no doubt that assize calendars would assume more and more the aspect of trying those offences rather in a larger proportion than before. It certainly would be undesirable if through misconceptions such as those to which he had referred that tendency were accentuated and the calendars became almost, if not quite, exclusively of that character. Crime was very imitative, and the fact that it bulked largely of a certain character, so far from deterring people, seemed rather to encourage them unless the punishment was very severe. These were considerations why the Act should be fairly and fully worked. They certainly seemed to him to be illustrative of the reason why it should not be worked to excess and beyond both its true spirit and letter.

LOCAL GOVERNMENT VOTERS AND POOR LAW RELIEF.

The Kensington General Purposes Committee has recommended the council of that Royal Borough to support the resolution of the Westminster City Council in favour of making the receipt of poor law relief by any man, his wife, or child a disqualification from voting at a local government election within twelve months, and also to make a representation in support of it to the Ministry of Health.

SOME DIFFICULTIES UNDER THE NEW TITHE ACT.

The National Tithepayers' Association, founded to protect the interests of tithepayers and of ratepayers in districts where rates are affected by the tithe rent-charge, held its annual meeting recently at 20, Hanover-square. The chairman, Mr. Alfred J. Burrows (Messrs. Knight, Frank & Rutley) presided.

The annual report, read by Mr. F. R. Allen (Canterbury), secretary, stated that the events of the past year had justified the continuance of the association. Tithe law had not been simplified by the Tithe Act of 1925, and a large number of inquiries had been received from all parts of England in regard to difficulties which had arisen.

The complaints most frequently made by tithepayers appeared to be:—

That tithe rent-charge is often too high in proportion to the value of the produce of the land on which it is charged.

That the titheowners, while thus taking in many cases an undue proportion of the income derivable from agricultural land, do not adequately contribute towards the burdens which have to be borne, or share in the risks which have to be run, by the cultivators and owners of the land, by whose exertions and enterprise alone the tithe rent-charge is of any value.

That where land is divided in ownership, titheowners recover the whole of the tithe rent-charge from the owner of a small portion of the land, even if that owner is in no way responsible for the splitting up of the land.

That tithepayers are being compelled to redeem tithe rent-charge when they do not wish to redeem it, and are thus being forced to divert their capital from some more remunerative purpose.

The attention of the council had been drawn to proposed legislation, described as the Benefices (Appropriation of Surplus Endowments) Measure, which, if enacted, would enable Commissioners to appropriate tithe rent-charge and take it away from the parish to which it belonged. The council questioned the justice of taking tithe which had been provided by parishioners for the purposes of their parish and giving it to another parish.

The report was adopted, Mr. Burrows was re-elected chairman, and it was decided to extend the scope and influence of the association as much as possible.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
Monday Feb. 7	Mr. Bloxam	Mr. Synge	Mr. Jolly	Mr. More
Tuesday ... 8	Hicks Beach	Ritchie	More	Jolly
Wednesday . 9	Jolly	Bloxam	Jolly	More
Thursday .. 10	More	Hicks Beach	More	Jolly
Friday ....- 11	Synge	Jolly	Jolly	More
Saturday ... 12	Ritchie	More	More	Jolly

Date.	Mr. Justice Astbury.	Mr. Justice Clauson.	Mr Justice Russell.	Mr. Justice Tomlin.
Monday Feb. 7	Mr. Hicks Beach	Mr. Bloxam	Mr. Synge	Mr. Ritchie
Tuesday ... 8	Bloxam	Hicks Beach	Ritchie	Synge
Wednesday . 9	Hicks Beach	Bloxam	Synge	Ritchie
Thursday .. 10	Bloxam	Hicks Beach	Ritchie	Synge
Friday 11	Hicks Beach	Bloxam	Synge	Ritchie
Saturday ... 12	Bloxam	Hicks Beach	Ritchie	Synge

THE MIDDLESEX HOSPITAL.

WHEN CALLED UPON TO ADVISE AS TO LEGACIES, PLEASE DO NOT FORGET THE CLAIMS OF THE MIDDLESEX HOSPITAL, WHICH IS URGENTLY IN NEED OF FUNDS FOR ITS HUMANE WORK.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 5%. Next London Stock Exchange Settlement Thursday, 10th February, 1927.

	Middle Price 2nd Feb.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 2½%	85½	4 13 6	—
Consols 2½%	55½	4 10 0	—
War Loan 5% 1929-47	101 $\frac{1}{32}$	4 19 0	4 19 0
War Loan 4½% 1925-45	96½	4 13 6	4 17 0
War Loan 4% (Tax free) 1929-42 ..	101⅛	3 19 0	3 17 0
War Loan 3½% 1st March 1928 ..	98½xd	3 11 0	4 12 0
Funding 4% Loan 1960-90	87½	4 11 6	4 13 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years ..	93¼	4 6 0	4 9 6
Conversion 4½% Loan 1940-44 ..	96⅝	4 13 0	4 15 6
Conversion 3½% Loan 1961	76 $\frac{7}{16}$	4 12 0	—
Local Loans 3% Stock 1921 or after ..	63¼	4 14 0	—
Bank Stock	253½	4 14 6	—
India 4½% 1950-55	91⅜	4 18 6	5 2 6
India 3½%	69¼	5 0 0	—
India 3%	59	5 2 0	—
Sudan 4½% 1939-73	94	4 16 0	4 19 0
Sudan 4% 1974	84¼	4 15 0	4 18 0
Transvaal Government 3% Guaranteed 1923-53 (Estimated life 19 years) ..	81¼	3 14 0	4 12 0
Colonial Securities.			
Canada 3% 1938	83¼	3 11 6	4 18 0
Cape of Good Hope 4% 1916-36 ..	92½	4 7 0	5 1 0
Cape of Good Hope 3½% 1929-49 ..	79½	4 8 6	5 1 0
Commonwealth of Australia 5% 1945-75	99¾	5 0 0	5 1 6
Gold Coast 4½% 1956	94½	4 15 6	4 17 6
Jamaica 4½% 1941-71	91⅜	4 18 0	5 0 0
Natal 4% 1937	93	4 6 0	4 18 6
New South Wales 4½% 1935-45 ..	87½	5 3 0	5 11 6
New South Wales 5% 1945-65	95½	5 4 6	5 6 0
New Zealand 4½% 1945	95xd	4 15 0	4 18 6
New Zealand 4% 1929	98½	4 1 6	5 1 0
Queensland 5% 1940-60..	98¼	5 1 6	5 3 0
South Africa 5% 1945-75	101	4 19 0	4 19 6
S. Australia 5% 1945-75	99½	5 0 6	5 2 0
Tasmania 5% 1932-42	99¼	5 1 0	5 2 0
Victoria 5% 1945-75	99½	5 1 0	5 2 0
W. Australia 5% 1945-75	99½	5 0 6	5 2 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	62	4 17 0	—
Birmingham 5% 1946-56	103½	4 16 6	4 17 0
Cardiff 5% 1945-65	101½	4 19 0	4 19 6
Croydon 3% 1940-60	68¼	4 8 0	5 1 0
Hull 3½% 1925-55	77	4 11 0	5 0 0
Liverpool 3½% on or after 1942 at option of Corpn.	73¼	4 15 6	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52½xd	4 15 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	63½xd	4 15 0	—
Manchester 3% on or after 1941 ..	62	4 17 0	—
Metropolitan Water Board 3% 'A' 1963-2003	64¼	4 13 6	4 16 0
Metropolitan Water Board 3% 'B' 1934-2003	65xd	4 12 0	4 14 6
Middlesex C. C. 3½% 1927-47	81¼	4 6 0	4 18 0
Newcastle 3½% irredeemable	71½	4 18 6	—
Nottingham 3% irredeemable	61½	4 17 6	—
Stockton 5% 1946-66	100½	4 19 6	4 19 6
Wolverhampton 5% 1946-56	101½	4 18 6	4 19 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture ..	82	4 17 6	—
Gt. Western Rly. 5% Rent Charge ..	99½	5 0 6	—
Gt. Western Rly. 5% Preference ..	97	5 3 0	—
L. North Eastern Rly. 4% Debenture	76½	5 4 6	—
L. North Eastern Rly. 4% Guaranteed	74	5 8 0	—
L. North Eastern Rly. 4% 1st Preference	65½	6 2 0	—
L. Mid. & Scot. Rly. 4% Debenture ..	79¼	5 0 0	—
L. Mid. & Scot. Rly. 4% Guaranteed ..	79½	5 0 6	—
L. Mid. & Scot. Rly. 4% Preference ..	76	5 5 0	—
Southern Railway 4% Debenture ..	81½	4 18 0	—
Southern Railway 5% Guaranteed ..	100½	4 19 6	—
Southern Railway 5% Preference ..	97	5 3 0	—